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ENVIRONMENTAL ASSESSMENT BOARD



ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARINGS

VOLUME: 172

DATE: Thursday, November 19, 1992

BEFORE:

| | |
|------------------------------|----------|
| HON. MR. JUSTICE E. SAUNDERS | Chairman |
| DR. G. CONNELL | Member |
| MS. G. PATTERSON | Member |

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ENVIRONMENTAL ASSESSMENT BOARD
ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

IN THE MATTER OF the Environmental Assessment Act,
R.S.O. 1980, c. 140, as amended, and Regulations
thereunder;

AND IN THE MATTER OF an undertaking by Ontario Hydro
consisting of a program in respect of activities
associated with meeting future electricity
requirements in Ontario.

Held on the 5th Floor, 2200
Yonge Street, Toronto, Ontario,
Thursday, the 19th day of November,
1992, commencing at 2:23 p.m.

VOLUME 172

B E F O R E :

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| THE HON. MR. JUSTICE E. SAUNDERS | Chairman |
| DR. G. CONNELL | Member |
| MS. G. PATTERSON | Member |

S T A F F :

| | |
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| MS. C. MARTIN | Administrative Coordinator |
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| | | |
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| B. HARVIE |) | |
| J.F. HOWARD, Q.C. |) | |
| J. LANE |) | |
| G. A. KARISH |) | |
| J.C. SHEPHERD |) | IPPSO |
| I. MONDROW |) | |
| J. PASSMORE |) | |
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A P P E A R A N C E S
(Cont'd)

| | | |
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| R. POWER | | CITY OF TORONTO, SOUTH BRUCE ECONOMIC CORP. |
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| J. OLTHUIS |) | ANISHNABAI AND MOOSE RIVER/ |
| J. CASTRILLI |) | JAMES BAY COALITION |
| T. HILL | | TOWN OF NEWCASTLE |
| M. OMATSU |) | OMAA |
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(Cont'd)

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| C. FINDLAY |) | |
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| S. GOUDGE | | CUPE |
| D. COLBORNE | | NIPIGON ABORIGINAL PEOPLES' ALLIANCE |
| R. CUYLER | | ON HIS OWN BEHALF |
| L. BULLOCK |) | CANADIAN NUCLEAR ASSOCIATION |
| L. CHAN |) | |
| R. MATSUI |) | |
| M. ANSHAN | | CAESCO |

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1 ---Upon commencing at 2:23 p.m.

2 THE CHAIRMAN: Please be seated.

3 About 17 minutes ago we were handed a
4 four-page document entitled a Draft Proposal, and in
5 the words of the Mikado, which I mentioned to my
6 colleagues, "to ask you what you mean to do we
7 confidently appear." So we will just sit back and see
8 what is going to happen.

9 I know many of you have been working very
10 hard in the last three days and we certainly appreciate
11 that.

12 MR. B. CAMPBELL: Mr. Chairman, if I
13 could speak to this perhaps first. I am not sure which
14 role I appear in before you from the Mikado, but I
15 think there will be others who appear who will be vying
16 for the role of executioner. I am not one.
17 [Laughter.]

18 I would like to present to you, there are
19 a number of counsel and representatives who have
20 requested that the adjournment be continued until
21 November 26th, 1992 to allow counsel or representatives
22 to seek instructions with respect to this proposal.
23 You will understand that some of the details have been
24 hammered out as late as this morning, and that many of
25 us are in the position that we do need to go back and

1 discuss this with our clients.

2 I think I can say fairly that I have
3 sufficient instructions from Ontario Hydro to indicate
4 that it supports the proposal put forward in this
5 document.

6 I have a list, a signed list, of those
7 who have signed under the group that are continuing to
8 request the adjournment until the 26th, and perhaps the
9 simplest thing, if I could simply provide the Board
10 with that.

11 THE CHAIRMAN: That's supporting the
12 adjournment but not necessarily supporting the proposal
13 because that's subject to instructions; is that
14 correct?

15 MR. B. CAMPBELL: That's correct.
16 Obviously these people are happy to take it back to
17 their clients and seek instructions, but where they are
18 in the gradient between not being able to say anything
19 and being able to say what I said varies widely in the
20 group, and it was decided that we should give you an
21 indication, though, of those who are quite willing to
22 take it back and seek instructions.

23 In terms of the proposal itself, I'm not
24 sure whether the Board would wish me to sort of walk
25 through it briefly. I think it is relatively clear and

1 straightforward.

2 The important point that I would like to
3 stress with you, I think has to do with the test you
4 should apply in looking at this proposal.

5 You sent us away earlier this week to
6 build a car that would run. We have built a car, we
7 believe it will run, the clutch is depressed, first
8 gear is engaged, and we would ask your permission, and
9 I certainly, on behalf of Hydro, request that we be
10 allowed the opportunity to let that clutch out slowly
11 and to show you that this car will run.

12 We have built into the schedule several
13 opportunities for you to satisfy yourself that the car
14 is running, and I think the test you should apply is
15 not whether we have reached a high rate of speed by
16 now, although my submission is that we have moved with
17 a high rate of speed to get to this by today. People
18 have indeed worked very hard on it. But that should
19 not be your test for today.

20 Your test should reflect the confidence
21 that a large number of parties have that in fact this
22 car can and will run, and that you don't have to simply
23 accept that as a matter of faith. You can say, I want
24 to be shown, when it comes time to change gears and
25 move to a higher rate of speed we want to be satisfied

1 when that happens we are there to make sure it happens
2 correctly and it is really working, that we can engage
3 second gear and so on.

4 DR. CONNELL: Is it energy efficient?
5 [Laughter.]

6 MR. B. CAMPBELL: Absolutely. If I could
7 get ONGA to sign the first page I might even be able to
8 say it is natural gas powered, but there might be
9 another connotation to that as well so I will put that
10 one aside. [Laughter.]

11 In any event, I would like to thank the
12 people in this room who have assisted in putting this
13 together.

14 Mr. Greenspoon and I proposed an
15 adjournment to you with the purpose of seeing whether a
16 proposal like this could be put together and operated,
17 and I have been very impressed with the willingness at
18 the table to come to grips with, from such disparate
19 points of view, all of the considerations that go into
20 putting a document like this together. I am satisfied
21 that if the objectives are approached, as I expect they
22 will be, with good faith and with energy, that the
23 result for the Board will be a substantial facilitation
24 of the balance of its proceedings.

25 THE CHAIRMAN: Ms. Couban?

1 MS. COUBAN: Thank you, Mr. Chairman.

2 On behalf of my client, the Government,
3 Ministries and agencies who I represent at this
4 hearing, I can advise the Board that I have
5 instructions to endorse the draft proposal as put
6 before you, that of course includes an agreement to the
7 one week's adjournment for parties to seek instructions
8 with respect to the proposal. But I can advise you
9 that my client does endorse the proposal as put before
10 you.

11 As I advised the parties this morning and
12 can now advise the Board, my clients as a party to this
13 hearing are interested in pursuing with the other
14 parties a short-term process that is aimed at
15 categorizing the issues as those categories have been
16 set out in the draft proposal before you.

17 My client is interested in the views of
18 the parties on why and where different issues fit.

19 If parties are willing to approach this
20 task in a co-operative and constructive fashion, we are
21 of the view that this process of categorizatin can be
22 reasonably accomplished within the time frames set out
23 in the proposal before you. And having participated in
24 the discussions over the last two days, I can advise
25 the Board that it is my impression that the parties

1 around the table, at least the majority of the parties,
2 appear to be willing to co-operate in a constructive
3 fashion to meet a mutually agreeable end
4 to the discussions.

5 At this point my client is making no
6 commitment with respect to what will be done with
7 respect to the category 2 issues. I believe that that
8 is fairly reflected in the draft proposal and the
9 document on page 1 in the paragraph under item 3, which
10 reads:

11 Consistent with this, discussion would
12 need to focus at an early stage on
13 whether mechanisms are available or could
14 be made available for more regular public
15 review of planning matters. This
16 discussion will continue with the
17 understanding that there is no present
18 commitment from the government with
19 respect to regulatory or legislative
20 reform, although the government is
21 interested in the parties' views.

22 We believe in that if the parties are
23 successful in coming to an agreement on the
24 categorization of issues, we will have provided an
25 excellent basis for the streamlining of the remaining

1 Demand/Supply Plan process.

2 On that basis, as I indicated at the
3 beginning of my submissions, we do have instructions to
4 agree to the adjournment and to endorse the proposal as
5 put forth.

6 MS. PATTERSON: Could I just ask, in
7 terms of the Issues, how detailed or broken down are
8 the issues that you would try to categorize? It would
9 go all the way from fine issues under topic like NUGs
10 or nuclear or hydraulic, or you could take the issues
11 as the broad topic.

12 MS. COUBAN: I think at this point, Ms.
13 Patterson, it would be unfair to say that we discussed
14 that in any detail. I think at this point we have just
15 discussed the broad general categories. And the
16 details of the issues, whether they are very specific
17 or broad, is something that we will be discussing later
18 on in the process. I think there is a broad spectrum
19 with respect to each issue and the detail, and how much
20 detail we can go into with respect to the different
21 categories.

22 But to be reflective of the discussions
23 that have taken place in the last two days, my friends
24 can correct me if I am wrong, we didn't get into that
25 in a great deal of detail.

1 Thank you.

2 [2:30 p.m.]

3 THE CHAIRMAN: Thank you, Ms. Couban.

4 Mr. Greenspoon.

5 MR. GREENSPOON: Thank you, Mr. Chairman.

6 I agree with my friend, Mr. Campbell.

7 I would like to reiterate that from my
8 perspective it was a lot harder work, although
9 sometimes more interesting perhaps than some of the
10 days at the hearings, but certainly a lot harder work
11 with 20 lawyers at the same table, if you can imagine.

12 We had a very skilled facilitator to be
13 able to deal with that many people with such strong
14 feelings on so many issues.

15 I guess the reason I stood up was to say
16 that my friend and I - my friend, I understand, is
17 asking, although he didn't mention it, asking for an
18 adjournment again today of my motion, Northwatch's
19 motion and we consent to that. Whether it has to be
20 from time to time, whether it should go, I'll leave
21 that up to the Board.

22 And the only other issue that I wanted to
23 raise is that from Northwatch's point of view the last
24 two weeks have focused on this work and as a result our
25 filing has suffered. Our position remains as we said

1 on Monday that we just don't think we can do both
2 things at the same time and we are requesting that the
3 filing dates be put off until the first Monday of the
4 new year.

5 I wanted to also answer your question,
6 Ms. Patterson, because I think we did go a little
7 further than Ms. Couban said, in that when we talked
8 about working groups we talked about that, yes, we
9 would have a number of finer tuned issues under, you
10 gave the example of NUGs or nuclear, and that we would
11 go away and look at individual areas under those
12 issues, and maybe some issues under one broad category
13 would fall under 1, 2 and 3.

14 Now, we didn't discuss which and where
15 that might apply but that concept, subissues might fall
16 under 1, 2 and 3 rather than deciding where the main
17 issue had to fall.

18 Thank you.

19 THE CHAIRMAN: Mr. Poch?

20 MR. D. POCH: Mr. Chairman, I've assumed
21 you want to hear from those who are in a more
22 supportive mode at the moment, I've jumped up ahead of
23 my friend, maybe I am prejudging his position.

24 [Laughter.]

25 I don't have final instructions on this,

1 but based on my earlier instructions I can say that I
2 will certainly be recommending this to my client and I
3 have some confidence in that regard and I can
4 communicate that to you now.

5 And just to second Mr. Greenspoon's
6 comments on filing dates, both because of the slippage
7 that's occurred but also because with the filing of
8 evidence counsel and the central teams of intervenors
9 will feel obliged to pay attention to other parties'
10 evidence that has been filed and to start the work that
11 that will generate. And I think it would be healthy if
12 we could focus our attention on the discussion process,
13 assuming you give us leave to move forward on that, not
14 distracted by the other parties' filings quite so soon.
15 And so I think early January is an appropriate balance
16 in that regard, so that if we are back here, for
17 example, mid-January, we won't have lost any time in
18 that regard.

19 Thank you.

20 THE CHAIRMAN: Mr. Shepherd.

21 MR. SHEPHERD: Mr. Chairman, I echo the
22 comments of my friend Mr. Poch. We do not have final
23 instructions but our initial instructions indicate that
24 we will not only be asking for a one-week adjournment
25 to get instructions but that we will be endorsing this

1 process.

2 THE CHAIRMAN: Mr. Grenville-Wood.

3 MR. GRENVILLE-WOOD: Yes, thank you, Mr.
4 Chairman.

5 Just to be very brief, I will be
6 recommending this proposal to both of my clients so I
7 just wanted to have that on the record clearly stated.

8 I haven't got instructions to indicate to
9 you that they have approved today, but I will be
10 recommending it for approval to both sets of clients.

11 Thank you.

12 THE CHAIRMAN: Mr. Taylor.

13 MR. TAYLOR: Thank you, Mr. Chairman.

14 I too, Mr. Chairman, would indicate that
15 I will be recommending this to my client and hope to be
16 in a position next week to be able to respond very
17 favourably to this.

18 THE CHAIRMAN: Ms. Spoel.

19 MS. SPOEL: Mr. Chairman, the Voice of
20 Women has participated in the last two and a half days
21 of discussions. We are content to continue and endorse
22 the proposal.

23 We are confident that there will be a
24 role that the smaller or part-time parties can
25 successfully play in this and we have had some

1 discussions with Ontario Hydro about the funding of
2 smaller parties and ways that we might fit into it and
3 we are confident that we will be able to achieve a
4 satisfactory way of working in this process.

5 THE CHAIRMAN: Mr. Monger.

6 MR. MONGER: Mr. Chairman, I also will be
7 recommending the proposal as it presently exists to my
8 client the Consumers Association.

9 THE CHAIRMAN: Thank you. Mr. Campbell.

10 MR. M. CAMPBELL: I too will be
11 recommending the proposal on behalf of Public Health
12 Coalition, Mr. Chairman.

13 THE CHAIRMAN: Ms. Kleer.

14 MS. KLEER: I will be seeking
15 instructions from my clients on the proposal. I just
16 want to draw to the Board's attention and emphasize the
17 need for my clients to have a sufficient amount of time
18 to get instructions, and so I think we have gone a long
19 way to reach acceptable compromises on the dates that
20 are in there.

21 I can only say that I will seek
22 instructions from my clients on these.

23 THE CHAIRMAN: Ms. Marlatt?

24 MS. MARLATT: Mr. Chairman, the North
25 Shore Tribal Council position is the same as that

1 outlined by Nancy Kleer, we will be seeking
2 instructions from our clients as to whether or not this
3 is an acceptable process by them and we have agreed on
4 the date as outlined in the proposal you have before
5 you as to what date is acceptable, by which time we
6 think we can get those instructions.

7 THE CHAIRMAN: Thank you.

8 MS. MARLATT: Thank you.

9 THE CHAIRMAN: Mr. Colborne.

10 MR. COLBORNE: Mr. Chairman, I can advise
11 that I have final instructions from my client NAPA and
12 we endorse this proposal.

13 I thought I would add a word or two about
14 why because I and others had raised concerns about
15 small parties. We were concerned that a very long
16 process of this type, or a very short process of this
17 type might hurt small parties because in a short
18 process the less important issues cannot be reached and
19 in a long process you are, in effect, negotiating with
20 people who have bottomless pockets. In either case,
21 the small parties could have lost out. We are
22 satisfied with the time frame in that respect.

23 The second major area of concern that we
24 had was the danger that the jurisdiction of this Board
25 would be determined by negotiation which we don't think

1 is the right place to determine jurisdiction.

2 THE CHAIRMAN: It's not possible anyway.

3 MR. COLBORNE: Exactly. But we were
4 afraid that some people might go off on a tangent
5 thinking that it could be. But we are satisfied that
6 the wording of this, particularly the numbered
7 paragraph 2 at the top of the first page, is such that
8 the parties will not be at the negotiating table trying
9 to assert what is or is not the jurisdiction of this
10 Board.

11 Thank you.

12 MR. HUNTER: Mr. Chairman, Dofasco
13 advised me this morning that as an issue of principle
14 they would support negotiations; however, I am to
15 obtain instructions from them with respect to the
16 specifics of this proposal.

17 Thank you.

18 THE CHAIRMAN: Thank you, Mr. Hunter.

19 Yes, sir?

20 MR. SMITH: Your Honor, my name is Ray
21 Smith, I'm with Allison District Environmental Walk --

22 THE CHAIRMAN: Are you supporting the
23 proposal?

24 MR. SMITH: No, we're not.

25 THE CHAIRMAN: Well, right now we are

1 just doing --

2 MR. SMITH: I'm sorry.

3 THE CHAIRMAN: You'll get your chance,
4 Mr. Smith, don't you worry.

5 MR. SMITH: Okay.

6 THE CHAIRMAN: Is there anyone else who
7 wants to speak in support of the proposal?

8 Is there anyone else besides Mr. Smith
9 who wants to speak against the proposal?

10 Mrs. Mackesy, Mr. Hamer, Mr. Mark, Mr.
11 Rodger, Mr. Bullock, Mrs. DeQuehen.

12 All right.

13 MR. ROGERS: Do we still have a confused
14 category, sir?

15 [Laughter]

16 THE CHAIRMAN: Yes. We'll have the
17 confused category at the end.

18 I think, Mr. Mark, would you like to
19 speak.

20 [2:40 p.m.]

21 MR. MARK: Thank you, Mr. Chairman.

22 Mr. Chairman, Mr. Campbell in his remarks
23 urged upon you that that he's now satisfied that he has
24 a car that will run. What nobody amongst the speakers
25 in favour of the proposal, Mr. Chairman, has addressed

1 is whether that car can possibly head in a useful
2 direction.

3 I have every confidence that this
4 collective gathering running on the very rich fuel of
5 public funds is capable of inventing a vertible
6 perpetual motion machine. [Laughter.] Unfortunately,
7 after participating in the discussions for three days,
8 I have seen no evidence at all that this vehicle can
9 head in a useful direction. I have seen no evidence,
10 frankly, that at this point in the proceedings, most of
11 the parties have even been prepared to honestly address
12 that question.

13 You recall that when this matter came
14 before you, Mr. Chairman, a few days ago, the proposal
15 on the table from Mr. Campbell at page 2 of his letter
16 was to adjourn the proceedings to December 15th to see
17 if the parties could in the interim design and agree
18 upon a process for some form of alternate dispute
19 resolution. That was the proposal.

20 You, Mr. Chairman, indicated that based
21 upon that simple proposal, you certainly were not
22 satisfied that there was sufficient indication that
23 this proposal was going to bear fruit, so you directed
24 the parties to go away and work some more. And what
25 have the parties come up, those who agree with this

1 proposal? Well, they have come up in my submission
2 with exactly the same position, at best exactly the
3 same position that Mr. Campbell put before you three
4 days ago. They want to go away this time not until
5 December 15th, they want to go away until January 14th
6 and see if in that time they can design a process which
7 on subsequent application may result in something
8 useful.

9 Secondly, Mr. Chairman, and I emphasize
10 this, there is far from, far from unanimity on this
11 proposal.

12 In fact, Mr. Chairman, I submit to you
13 that we are even further away from a useful objective
14 in this process than we were three days ago.

15 Not only have we not advanced beyond the
16 stage of talking about how we can talk about a process,
17 you now know definitively that there are a number of
18 significance parties to this hearing who will speak for
19 themselves who are opposed to this proposal.

20 We have had at least one party who has
21 been an active participate in the hearing, Mrs.
22 Mackesy, who quite rightly, in my submission, saw the
23 mischief that was about and refused to participate
24 further in the discussions. I cannot assume for one
25 that she does not represent a view that would be shared

1 by others in her position.

2 And of course, Mr. Chairman, we have the
3 problem that despite the signatories to this agreement
4 today, nobody yet with the exception I believe of Mr.
5 Campbell, has said they have instructions. So we are
6 facing at least another week before you have any idea
7 of what proportion of the parties are going to be in
8 favour.

9 Now, Mr. Chairman, as I expressed on
10 Monday, my concern with the proposal was not in any
11 respect that the parties here weren't capable of
12 inventing a process which would permit us to talk. The
13 issue, as we saw it, was whether there was any
14 reasonable prospect that given the nature of the
15 matters and issues, there could be agreement, be it on
16 deferrals, be it on the substantive issues, to a
17 sufficient extent that it would shorten the hearing in
18 a material way.

19 For the past three days, Mr. Chairman, I
20 have done my utmost, as have others, to turn attention
21 of this discussion group to exactly that question.
22 There was much discussion amongst the others about
23 defining these three categories.

24 I have got no objection in principle to
25 the notion of categories. If we are going to talk, it

1 makes sense to talk about issues that don't need to be
2 discussed anymore. That's obvious. No one can dispute
3 that. But when I asked the question on several
4 occasions, can we please idea any reasonable number of
5 significance issues which one could conceive of at this
6 point, reasonably going into these categories, I got
7 consistently one of two replies. I had one reply that
8 the process we are now engaged in is just to discuss
9 process and we are not interested in asking ourselves
10 the question yet of whether it can be possibly be
11 useful.

12 The other reply I got, when the question
13 was posed in more definitive terms, was, nobody could
14 identify an issue. I asked the collective gathering, I
15 said if Manitoba Hydro, if the Manitoba transmission
16 approval is still on table at this hearing, I said, can
17 demand management targets come off as an issue? The
18 answer was no. I said can the question of the role of
19 nuclear come off the table as an issue? The answer was
20 no. Can the question of environmental externalities
21 come off the table as an issue? The answer was no, as
22 it obviously it must be.

23 Mr. Hamer put the question, he said, is
24 there anybody here who is prepared to see -- can we
25 possibly have agreement that nuclear, the nuclear issue

1 is one for this hearing. With the exception of Mr.
2 Shepherd who says some aspects of it may be yes, some
3 of aspects of it may be no, nobody can even give that
4 indication.

5 Mr. Chairman, we are chasing an illusory
6 objective here. The parties over three days, in my
7 respectful submission, have either studiously avoided
8 the question of whether any real progress can be made
9 or they have acknowledged that it can't.

10 THE CHAIRMAN: Do you think it would be
11 fair to say that, obviously those are very pertinent
12 issues and ones that have to be addressed, that it
13 would be premature in the process that is trying to be
14 engendered to expect any party to commit themselves one
15 way or the other on any of those issues at this time in
16 the light of the kind of process that's going on?

17 MR. MARK: Certainly when I raised the
18 issue that I did in, for example, the Manitoba
19 Purchase, Mr. Chairman, I didn't ask whether anybody
20 had instructions, I distinctly didn't ask that. I said
21 let's have a discussion. Can anybody conceive of any
22 of the significant issues which can be made irrelevant
23 to the hearing, that can be brought off the table
24 possibly if Manitoba transmission was still on the
25 table. I wasn't asking for instructions, and the

1 answer was the same.

2 Now, Mr. Chairman, we all know there are
3 parties hwere who must of course go out and get
4 instructions, but we have all been here for nay on two
5 years now. Let us not be so detached from reality to
6 suggest that the type of discussion I was inviting
7 cannot take place today with the counsel here.

8 We have counsel who are prepared to
9 recommend acceptance for the proposal to their clients,
10 I do not accept that if they are prepared to go that
11 far in the representations before you, they can stand
12 mum on the substantive issue discussion.

13 We should address, Mr. Chairman, in some
14 detail what it is that we don't know about the process.
15 I suggest to you, Mr. Chairman, that on any close
16 reading of the proposal that's in front of you, that
17 you will see that the parties in fact, other than
18 agreeing on something akin to apple pie, have not been
19 able to agree on any of the other significant issues
20 which must be resolved before the process suggested can
21 even commence.

22 For example, there is still an issue
23 afoot as to whether this process is to be public or
24 not. There is a large debate as to whether there are
25 to be transcripts or not. There was a strong voicing

1 of opinion by many that this should be with
2 transcripts, public invited, some even wanted the Board
3 to be present.

4 There are others, myself included, who
5 are inclined to the view that if we are going to have
6 all parties represented, a debate in public with
7 transcripts to be made and the Board informed, I would
8 just as soon spend my money on the public hearing. I
9 don't happen to see much difference.

10 Until that issue is resolved, Mr.
11 Chairman, I suggest that there isn't even a reasonable
12 prospect that the process can proceed. And if that's
13 what it's going to be, Mr. Chairman, if either Hydro or
14 government or any of the parties to this proceeding
15 don't want a negotiation, as I had understood the
16 process would involve, but want this discussion, well
17 they can convene a round table discussion any time they
18 want and rather than having this hearing stand down
19 until March of this year to see if we can do something,
20 I suggest we proceed with the hearing.

21 THE CHAIRMAN: I'm sorry, where did you
22 get March?

23 MR. MARK: Let me turn to that right now.
24 The see the proposal on the table before the meeting
25 this morning, Mr. Chairman, had as the date, had as its

1 schedule -- give me a moment.

2 MS. PATTERSON: Were these discussions
3 supposed to be without prejudice?

4 MR. MARK: No, not at all.

5 MR. GREENSPOON: This is really not fair,
6 Mr. Chairman.

7 MR. MARK: I'm sorry.

8 MR. GREENSPOON: The discussions should
9 have been without prejudice.

10 MR. MARK: Hold on. Mr. Chairman --

11 THE CHAIRMAN: I am sure Mr. Mark can
12 make the point without offending any perceived -- I
13 don't know what the issue is or what the --

14 MR. MARK: Mr. Chairman, I don't know if
15 you were here or not.

16 THE CHAIRMAN: I wasn't.

17 MR. MARK: I asked the question at the
18 end of the proceeding on Monday afternoon, I said first
19 item on the agenda, who is going to be present at these
20 meetings for the next three days. I said, is this off
21 the record or is this public and on the record? And
22 the hue and cry went up at the temerity of my
23 suggestion, and parties here said, the press can come,
24 let's have the world there. And now they say it's
25 without prejudice?

1 THE CHAIRMAN: I'm not sure what the big
2 issue is. We are talking process and I don't really
3 see what difference it makes whether some people at one
4 time advocated one thing and now agree to advocate or
5 to support something, I don't think makes a hoot of
6 difference.

7 MR. MARK: What you have, Mr. Chairman is
8 a proposal before you that stops at January 14th, 1993.
9 The last issue, the last issue of that, or the last
10 task is define categories and categorize issues and
11 discussion of ADR regulatory process, referrals to
12 other process.

13 What isn't before you is the fact that
14 that only completes the first stage. The next issue on
15 the agenda, which was taken off the agenda only because
16 the parties weren't sure it was necessary to describe
17 all the dates today, item No. 5, discussion of issues
18 where agreement is sought, begin January 18th, 1993;
19 interim report to the Board, January 28th, 1993;
20 discussions conclude, February 22, 1993; final report
21 to the Board, March 8, 1993.

22 Now, unless there be any doubt, Mr.
23 Chairman, when Mr. Hamer raised the issue, he said,
24 don't you think in fairness you ought to put all those
25 dates on this sheet? And the response was, well, we

1 all know there is going to be proceedings after that
2 but I don't think we have to set out the dates.

3 MR. B. CAMPBELL: That's not right.
4 That's wrong.

5 THE CHAIRMAN: If people think that's
6 wrong, they will get an opportunity to make that
7 submission.

8 Mr. Mark, you just continue with your
9 submissions.

10 MR. MARK: There was also a concern, Mr.
11 Chairman, about the result that's going to come out of
12 this process.

13 As Mr. Campbell indicated to you the
14 other day, there really is no hope of unanimity with
15 respect to agreements on any large number of issues.
16 And, indeed, that seems to be reflected in the item No.
17 4 on page 3, under the schedule, which says that about
18 mid December, after we have designed the process, which
19 I gather despite this document we haven't yet done,
20 there will be an initial session and one of the issues
21 discussed is decision-making, consensus and minority
22 views and then reporting to the Board.

23 Now, Mr. Chairman, the object of this
24 exercise, as I understood it, was to hopefully deal
25 with issues and get them off the table in terms of what

1 this Board had to hear. That, Mr. Chairman, in my
2 respectful submission, is not a matter which can be
3 done on the basis of consensus and minority views.

4 Either there is unanimity or the issues
5 stay on the table.

6 The wording of item No. 2, at page 1, a
7 concept which continues to escape me, matters which do
8 not require decision from the Board in which parties
9 may feel are more appropriately dealt with elsewhere.
10 [2:55 p.m.]

11 Mr. Chairman, if it doesn't require a
12 decision from the Board it isn't here in the first
13 place; and if it does require a decision from the Board
14 then it's here if even one party wants it to be here.

15 Trying to draw a distinction, as I
16 understand is perhaps behind this, between matters
17 which require decision and matters which do not require
18 decision but the Board will comment upon is, for all
19 practical purposes, a distinction without a difference.

20 If the Board has determined or if the
21 Board determines that there are issues it must address
22 along the road to deciding whether to give an approval
23 or not, those issues are within your jurisdiction. You
24 have made that ruling with respect to the demand
25 management issue. You may not have any approval power

1 over it, but you can't run a very intelligent hearing
2 unless you hear evidence and come to some conclusions
3 about it; i.e., you have ruled, regardless of your
4 approval power, demand management is within your
5 jurisdiction and it cannot be taken off other than on
6 the basis of unanimity.

7 So unless any of the parties to this
8 proposal before you can suggest there will be any
9 significant number of issues upon which unanimous
10 agreement could be obtained it will not shorten the
11 hearing, Mr. Chairman, it will lengthen it by exactly
12 the amount of time it takes to come to that conclusion
13 some months from now when it is painfully obvious
14 today.

15 And, Mr. Chairman, what is the purpose of
16 the reports? Reports are not evidence.

17 THE CHAIRMAN: I am sorry, I am behind
18 you. What reports do you mean?

19 MR. MARK: Well, now they are talking
20 about, if I have it --

21 THE CHAIRMAN: We are dealing here, it
22 seems to me - and this is just thinking out loud - we
23 are dealing here with a combination of processes,
24 substance eventually down the road and how that's going
25 to shake out is really very difficult to predict, in

1 fact impossible to predict.

2 I think it's probably a fair guess that
3 nobody would think that there would ever be a unanimous
4 view on any major substantive issue. I think that
5 would be quite remarkable, in fact almost, I would
6 think, impossible to expect knowing the positions of
7 the parties here and the number of them, and if
8 consensus was consensus in the sense of 100 per cent
9 everybody in line, I don't think that anyone would
10 expect that to happen. I certainly wouldn't, I don't
11 know whether anyone else would.

12 MR. MARK: Mr. Chairman, let's look at
13 the objectives that are set out here. If someone were
14 to say to you that the objectives of this undertaking
15 were for parties to talk so that parties amongst
16 themselves could come to certain understandings about
17 evidence they would or would not lead in the hearing,
18 then, No. 1, it's a different concept; No. 2, I don't
19 think we have to stand down for three or four months to
20 have that happen, it's something that should have been
21 happening throughout.

22 It's with a view to, as I understand it,
23 shortening the proceedings, i.e., you have got to
24 eventually implement in some fashion what comes out of
25 this.

1 THE CHAIRMAN: Well, shortening is one
2 object but usefulness or value is another object.

3 MR. MARK: All right. But, I mean, what
4 is the value - I ask this, Mr. Chairman - of having --
5 let's say 70 per cent of the parties are in agreement
6 on what the disposition of a certain issue should be.

7 Now, if there isn't unanimity it can't
8 come off the table, and the simple fact that these
9 parties happen to be in agreement doesn't mean they are
10 relieved from the obligation of calling evidence.

11 I'm not sure I understand what's
12 proposed. Are they going to stand up and say: Well,
13 these number of parties have agreed that we are
14 satisfied that this is the appropriate ruling you
15 should make on this issue, and sit down. You don't
16 rule on basis on that agreement, I don't care if a
17 million people agree.

18 MS. PATTERSON: But isn't it possible
19 that all of that 70 per cent of the parties would bring
20 two witnesses instead of 20 witnesses and that that
21 would have the effect of shortening the hearing.

22 MR. MARK: Oh, I agree, but that's (a)
23 it's not what I understand this process to be; and, (b)
24 if that's what this process is, Ms. Patterson, with the
25 greatest respect, we don't need to invent, we don't

1 need to invent the rules for the United Nations and
2 take three months to do it.

3 If after two years in this hearing
4 parties haven't been able -- we are filing evidence
5 now, if parties haven't until now bothered to get
6 together and decide what they can collaborate on in
7 terms of filing evidence and calling evidence, we
8 should now put things on brakes for four months to do
9 that?

10 Time is too late for that, with the
11 greatest of respect, and I must tell you that based on
12 my participation in these discussions it would be
13 misleading for anyone to suggest that's the object of
14 the exercise.

15 I remind you, Mr. Chairman, that
16 ultimately the issues which must be had out of the way
17 to substantially shorten these proceedings are really
18 important fundamental issues of substance.

19 Whether, as somebody suggested, that at
20 these meetings we can put off the table the issue of
21 how much we should develop -- the issue of incineration
22 of mixed municipal waste, is not going to make a
23 material difference to the hearing process.

24 Another matter that has to be addressed,
25 Mr. Chairman, is - and it has to be addressed frankly -

1 is Ms. Couban's statement to you that with respect to
2 item No. 2 under the objectives she wanted to make it
3 clear, as I understand it from her comments to the
4 group and her comments today, that the government is
5 clearly not -- well, as it says here, there's no
6 commitment from the government with respect to
7 regulatory or legislative reform and the government's
8 position, putting it at its highest, is that it is
9 interested in the parties' views.

10 Mr. Chairman, it must be clear beyond a
11 doubt that category No. 2 is really the big category in
12 terms of being able to significantly change the shape
13 and length of this process. That is the catalyst of
14 this entire initiative and I don't think one needs to
15 review a lot of history to know that categories -- if
16 we were left to discuss categories 1 and 3 it's not
17 going to be particularly fruitful.

18 Now, if the government's position, Mr.
19 Chairman, at its highest is we don't know whether there
20 is going to be any reform and we are interested in
21 hearing your views, I suggest to you that ends the
22 discussion. There's not going to be any basis
23 sufficiently firm for the parties, including my client,
24 to come to any significant agreements on deferrals of
25 issues given that statement of position by the

1 government.

2 And I must, in coming towards the end of
3 my remarks, Mr. Chairman, express a very real concern.
4 Not only over the last three days have the efforts to
5 discuss some of the issues and even at a modest degree
6 of -- a modest depth in terms of seeing whether we are
7 going anywheres, aside from those attempts being
8 rebuffed Mr. Chairman, I must say that the impression
9 left with my client and myself is that the only times
10 progress was made on these discussions when bottlenecks
11 appeared - and I say this not to say what went on but
12 to express a concern of my client - is when certain
13 parties had discussions about the direction of things
14 and the shape of instructions in private off this
15 so-called public record, which is perfectly fair,
16 parties are entitled to do that. But my client at the
17 end of that, Mr. Chairman, is left with the real and
18 distinct impression that that is going to be the course
19 of these proceedings. That public, as some people may
20 want it to be, the process is ultimately dictated by
21 private agendas and by private agreements amongst the
22 parties.

23 THE CHAIRMAN: Isn't that almost a
24 feature of any process of this nature or any other
25 public or private, I mean, people do, parties do

1 discuss things amongst themselves and--

2 MR. MARK: That's right.

3 THE CHAIRMAN: --try and see how their
4 different interests can be harmonized. I mean, that
5 seems to me that is not a bad thing, it is sometimes a
6 good thing.

7 MR. MARK: No. That's fine when one is
8 settling matters, Mr. Chairman. It's especially fine
9 when parties are settling matters and they do so in a
10 forum where it's fully understood and expected that
11 it's not a public debate.

12 But with respect, there's many people who
13 are standing up and saying: This is a public debate on
14 the record, it is in fact a different table from this
15 hearing because we have difficulties with the
16 presentation of evidence and the way this proceeding
17 goes. And it's got to be one or the other.

18 The second concern, Mr. Chairman, is it's
19 proposed to come back, as I understand it, to make some
20 presentations to you on issues of public policy and I
21 say to you, Mr. Chairman, that it should be the
22 evidence that rules on that issue and not the process
23 that we have very large concerns about.

24 THE CHAIRMAN: But you have to recognize,
25 and I think you have said it many times, that we have

1 our mandate and we have to do what we are required to
2 do.

3 MR. MARK: That's right.

4 THE CHAIRMAN: If a certain issue was
5 unanimously taken off, that would be very persuasive if
6 everybody thought that should not be, but the last word
7 as to what is or is not part of this hearing rests with
8 the Panel.

9 MR. MARK: Clearly.

10 THE CHAIRMAN: I mean, we cannot abdicate
11 our responsibility to a group. But that does not mean
12 that we do not think that there might not be some value
13 in this kind of discussion.

14 MR. MARK: To put it bluntly, Mr.
15 Chairman, if this ADR process is going to work it's got
16 to have the confidence of the parties. If it's going
17 to have the confidence of the parties, it has got to
18 appear to be fair and I say to you that my client - and
19 you will hear from others I believe it's shared - is
20 most concerned that it is unable to have confidence in
21 this process because it feels it is essentially being
22 dictated by agendas which are not clear.

23 It is not, I think without significance,
24 Mr. Chairman - and you will hear from others who are
25 opposed to this proposal - it is not without

1 are finally going to be.

2 And finally, Mr. Chairman, with respect
3 to the matter of intervenor funding, in my submission,
4 as I indicated to you the other day, it is not
5 sufficient, despite my opposition to it be being funded
6 at all, but it's not sufficient for Ontario Hydro to
7 simply offer the intervenor funding to defray, at the
8 prescribed rates, the costs of the actual participants
9 or those required in order to participate in the ADR
10 process.

11 This is, if you will, an extra curricular
12 activity being convened at the suggestion of Ontario
13 Hydro. Intervenor funding does not cover but a portion
14 of the costs actually incurred by intervenors in
15 participating in proceedings such as this.

16 My client, as will most parties I think,
17 will be left in a net worse budget position by
18 participating in this even with intervenor funding.
19 And there must be a more realistic basis for
20 compensating the parties for participating in this
21 process which is not budgeted for and is outside the
22 strict hearing process.

23 I would also ask that consideration be
24 given to covering other costs associated, because if we
25 are going to stand down this hearing for two months or

1 significance that I believe almost by and large the
2 major parties who are opposed to this proposal are
3 those who have found themselves in the last several
4 months of the view that Hydro's present approach to
5 planning is inappropriate, and you really have one side
6 of the debate in the public hearing opposing the ADR as
7 it's proposed, and I suggest to you, Mr. Chairman, that
8 that must be taken into account in deciding whether
9 this process has the necessary confidence of the
10 parties it requires to go ahead. In my view, it does
11 not; in my view, respectfully, one side of the debate
12 on the public issues before you is very, very concerned
13 and skeptical about the process that is being proposed.

14 Just a couple of, I guess I will call
15 them, housingkeeping matters, Mr. Chairman. If the
16 proposal before you attracts your approval, I still
17 maintain that the Northwatch motion should proceed
18 first. I still have enormous difficulty with the
19 concept that people who -- people can simultaneously,
20 not as alternative positions, but simultaneously
21 maintain that you have no jurisdiction to proceed yet
22 they want to make it easier for you to proceed with
23 those self-same issues.

24 It's an inconsistent position. Either
25 there is a hearing or there is not. Let's dispose of

1 the Northwatch motion. If there is nothing left before
2 you, we don't need an ADR; if there is something left
3 before you, then we can consider it.

4 But I cannot conceive of how the Board
5 respectfully, Mr. Chairman, could authorize the parties
6 to go out and see if they can streamline the issues
7 from the hearing when there is afoot a motion to say
8 the hearing has no basis for proceeding at all.

9 And lastly, Mr. Chairman, on the question
10 of filing it is the position of the MEA that if we are
11 going to proceed with this process the filings should
12 be postponed. There is fundamentally the question of
13 how much attention you can pay to that while this
14 process goes on.

15 No. 2, Mr. Chairman, if we are to achieve
16 some savings, I think we are washing a lot of them away
17 if we are going to go through the evidence process now
18 and then maybe redefine what the issues in the hearing
19 are, because that may require that the evidence itself
20 be revised, and that seems to me to be quite a waste of
21 time.

22 [3:10 p.m.]

23 I think it must be self-evident that the
24 parties should not be called upon to file their
25 evidence until they know what the issues in the hearing

1 three months or four months, whatever it takes, Mr.
2 Chairman, there are going to be other large costs
3 incurred. People have committed to this hearing,
4 people have been hired on full-time or part-time,
5 whatever bases, and there is simply going to be an
6 enormous waste of money if the entire interventions are
7 stood down, and I would like those issues to be left
8 open to be addressed specifically should you determine
9 to proceed with the proposal.

10 Subject to your questions, those are my
11 submissions.

12 THE CHAIRMAN: Mr. Campbell, I would like
13 to get clarified about what you see is going to happen
14 after January 14th under this proposal.

15 MR. B. CAMPBELL: Mr. Chairman, I think
16 the document accurately describes --

17 THE CHAIRMAN: Well, it does in a general
18 way, but I am more interested in a specifics.

19 What point do you think we are going to
20 be at on January 14th, everything going very well.

21 MR. B. CAMPBELL: Everything going very
22 well, I think there will be substantial areas --
23 ---Off the record.

24 MR. B. CAMPBELL: I think if everything
25 goes well by January 14th we will be able to come back

1 to you on that date and show that the process that we
2 have gone through and the discussions that have taken
3 place as a result of the categorization of these issues
4 has led to substantial reduction in the task remaining
5 to the Board, in the sense that we will have focused
6 your work for you, we will have reduced the diversity
7 of views to a smaller number of more well-defined
8 perceptions on the different issues, and that we will
9 come to you with a recommendation that says we have
10 gone as far as we think we can in terms of producing a
11 significant result for a small investment of time, or
12 we will tell you, if you grant us another three weeks
13 or four weeks or March, or whatever, we think for the
14 following reasons we can assist you even further on
15 this.

16 The January 14th date - and I disagree
17 strongly with the characterization that my friend has
18 put to you on this, and I don't want to get into what I
19 am going to deal with in reply - but the January 14th
20 date is the proposal before you and its
21 characterization is correctly stated.

22 THE CHAIRMAN: Does that mean that on
23 January 15th we can continue with the hearing and
24 people will be putting in evidence? Is it that the way
25 you see it?

1 MR. B. CAMPBELL: I think if it's that
2 clear that the right result, that we are inevitably
3 leading to concluding the hearing, then that may be
4 possible, because we will know -- we may well know that
5 well before January 14th.

6 THE CHAIRMAN: Or with Mr. Greenspoon's
7 motion, one or the other.

8 MR. B. CAMPBELL: Yes. I encompass
9 returning to the hearing as encompassing Mr.
10 Greenspoon's motion, getting back into the calling of
11 evidence, and so on.

12 THE CHAIRMAN: I don't know a great deal
13 about this kind of process, and I guess no two are
14 alike, but one thing I think is almost a fundamental
15 rule, and that is if January 14th the date, January
16 14th is the last date, it's not a date that's going
17 going to be extended, it's not a date that's going to
18 be pushed forward, it's the date in which there is no
19 tomorrow. In other words, If the process isn't
20 accomplished by January 14th it's over, and everyone
21 has to understand that.

22 MR. B. CAMPBELL: I think for the
23 purposes that are outlined in the activities leading up
24 to January 14th it is over.

25 What we do say to you is that that being

1 so, and we have carefully put in dates so you could
2 satisfy yourself, what we do say to you is that that
3 being so, you should not foreclose the possibility that
4 Mr. Mark's client is converted, that we have made great
5 progress, we have shown you a product which you satisfy
6 yourself is making the work of this Board more
7 efficient and effective, and if we come to you and say,
8 and we think with a little bit more time we can top
9 this up even more, you ought to be open to be persuaded
10 of that. We understand the hill we are facing. No
11 question about that.

12 There has been explicit recognition
13 throughout these discussions that the Board would have
14 to be satisfied that this was worthwhile, we built in
15 checks for that, and you have got to be satisfied.
16 Nobody is trying to pussyfoot around that issue at all.

17 You know, never say never is the advice
18 that I give the Board. It is possible that we could
19 come back to you and say it's worth taking an extra
20 couple of weeks.

21 THE CHAIRMAN: I think if that
22 possibility was out, inevitably there would be another
23 couple of years and then a couple of weeks after, and
24 then so on. It never ends. There has got to be some
25 point at which it ends and we get back to the hearing,

1 or we deal with Mr. Greenspoon's motion and it's
2 successful.

3 MR. B. CAMPBELL: I think our simple
4 point is there is no need to make an unbendable
5 decision, an unshakeable decision on that matter today.

6 We see this process as coming up with a
7 very useful product by January 14th. We don't see it
8 going on forever. Nobody is trying to nickel and dime
9 you here. We are trying to say we think we have got a
10 useful product, a useful result by that time. And it
11 was specifically decided that the dates that my friend
12 has referred to would not go forward to you in this
13 document on that precise understanding.

14 DR. CONNELL: Mr. Campbell, could I just
15 explore with you what has changed since Monday.

16 We discussed Phase 1 on Monday which
17 might end December the 16th, and we discussed a second
18 phase which might end at an indefinite time several
19 weeks later. I take it that the discussions that you
20 have had since Monday, which have led to this proposal,
21 that this goes a good deal beyond what you had
22 envisioned as the objectives on Phase 1 on Monday and
23 it allows more time to reach those further objectives.
24 But am I correct in assuming then that you still have
25 in mind a Phase 2 but that that is a little more

1 hypothetical than it was on Monday?

2 MR. B. CAMPBELL: I think this goes a
3 long way beyond what I spoke to on Monday. What I
4 spoke to on Monday was very conceptual. There has been
5 a fair degree of consensus around how it would be
6 useful by going through a categorization process. The
7 categorization process produces a product by itself by
8 the nature of the categories, so it is dealing with the
9 issues as we go along and do that process.

10 The other thing, as I have tried to make
11 clear on Monday, was that I didn't want to try, in
12 discussing this initially with people to put any
13 particular shape or method of approaching it as a hard
14 proposal as to how to do it.

15 I thought that if there was a sufficient
16 will amongst the group of intervenors, that a good test
17 of that was could they put together a process that they
18 felt would work and achieve some results that would be
19 useful to everybody. I guess my submission is, and
20 certainly in our terms, that test has been passed.

21 So I think through to January 14th
22 encompasses an awful lot of what was contemplated
23 conceptually by us in putting forward this proposition.

24 But the principle we have tried to
25 observe all along is the test we are going to be put to

1 is show me. Bland assurances aren't enough. We want
2 to be able to show you as we go along at regular
3 intervals. We understand that the minute you feel that
4 we can't show you, then the inclination is going to be
5 to pull the plug on this. That's the test.

6 THE CHAIRMAN: Now that you are on your
7 feet, there is another question for you. Item 4 on
8 your schedule is facilitators retained. I first of all
9 thought that they were going to be retained on November
10 27th, now it looks like, perhaps it is subject to
11 interpretation, they are going to be retained sometime
12 between November 27th and December 9th.

13 I would have thought that if this process
14 is going to have any chance of working, the
15 facilitators ought to be in place on November 27th, if
16 at all possible.

17 I notice it's plural, I don't know
18 whether that's been the subject of discussion or not.
19 But how are the facilitators going to be retained, what
20 is the process for that?

21 MR. B. CAMPBELL: The understanding is
22 that people who have suggested names, and so on, would
23 bring them forward. I think they are going to be
24 gathered by Ms. Morrison.

25 If the proposal sees favour with the

1 Board today, then there would immediately be
2 established a smaller committee to assist in the
3 selection and instruction of the facilitator so that
4 that discussion that is contemplated to run through to
5 December 9th or so could take place by the facilitator
6 while people are getting instructions on issues. So
7 that when we landed on December 19th with the initial
8 plenary session, that would not be a start up; that
9 would be we land on our feet running, as it were.

10 So that between once people have
11 instructions and then first plenary session, it's
12 anticipated that all the work -- there would be
13 considerable work going on over that period in getting
14 ready, so the first plenary session could proceed in a
15 useful way. People would have turned their people mind
16 to the issues, there would be specific propoals brought
17 forward and so on.

18 THE CHAIRMAN: I would have thought there
19 would be some merit in the facilitator being in place
20 well before the first plenary session in order for the
21 facilitator to meet with the parties, discuss their
22 views, and so on, before the first plenary session came
23 together.

24 MR. B. CAMPBELL: Yes. I have on
25 obviously been unclear because that's exactly what is

1 expected under this, is that the facilitator would be
2 brought on board as soon as possible, the working group
3 to help that happen would be put in place as soon as
4 possible a after today, and that those discussions
5 would take place with the parties over that period.
6 That's exactly what is contemplated.

7 THE CHAIRMAN: I am not saying we are
8 going to do this, but would the Panel be the one who
9 appoints the facilitator? Like anything else, I cannot
10 expect there to be unanimity on the nomination of the
11 facilitator or facilitators.

12 MR. B. CAMPBELL: If there is not, I
13 would certainly from my experience in these matters
14 recommend that - I can't speak for all parties on this,
15 I don't recall whether it was discussed in exactly
16 those terms - certainly my strong recommendation would
17 be that the facilitator be appointed by the Panel,
18 absolutely. My experience in these matters is that
19 that is the best possible approach.

20 Certainly, one hearing in particular when
21 there were a couple of methods of this tried, certainly
22 when the facilitator was appointed by the panel, it
23 really helped make a lot of progress quickly.

24 THE CHAIRMAN: Mr. Mark, I have raised a
25 couple of additional points of Mr. Campbell, so if you

1 want to add anything to your submissions you can do so.
2 You don't have to, I just want to give you the
3 opportunity.

4 MR. MARK: I do, Mr. Chairman. I think
5 it really bears pointing out. I will leave aside any
6 more discussion about what was discussed this morning.

7 Mr. Chairman, if you have read through
8 this document, you know that the type of mechanisms
9 that's proposed. Plenary sessions, working groups. We
10 still have to resolve is it public or not. Record
11 keeping. We still have to resolve where sessions are
12 going to be held. There is an issue of whether and how
13 many sessions for all of the hearing -- or this process
14 get held in the North. There are discussions about how
15 we notify parties. There is discussion about we still
16 have to design the process, talk about initial
17 sessions, about reporting, about decision-making,
18 consensus, minority reviews. And you know the scope of
19 the task.

20 For all that to take place from December
21 the 16th to January 14th, with the Christmas break in
22 between, Mr. Chairman, it is simply, it is simply
23 impossible. And Mr. Campbell, I think, when he says
24 sort of soto voce that we just want a chance to show
25 you on January 14th we are making real progress he is

1 saying what is obvious. The real discussion on the
2 issues, there is not a chance, there is not a chance in
3 the world that with the holidays and those call it
4 maybe three working weeks between December 16th and
5 January 14th, any significant progress having all these
6 parties at the table is going to be made.

7 THE CHAIRMAN: Mr. Rodger?

8 MR. RODGER: Thank you, Mr. Chairman.

9 AMPCO cannot sign on to the proposal of
10 which we sat through the past couple of days, and we
11 are recommending to you today that you reject the view
12 that this matter be adjourned and we recommend that the
13 Board order that the Northwatch motion be heard this
14 Monday morning, November 23rd, at 9:00 a.m.

15 Mr. Mark has reviewed a number of the
16 issues as to why we have come to this position, but
17 there was one particular area which I would like to
18 underscore for you which is of particular importance to
19 my client.

20 It is very apparent that the primary
21 impetus for calling these discussions was the
22 recognition among many, many parties in this process
23 that the current regulatory regime is inadequate, and
24 that there has to be some real regulatory reform and
25 some real change.

1 [3:30 p.m.]

2 And that was a fundamental issue that was
3 carried forward to the discussions of the past couple
4 of days.

5 With the greatest respect to this Board,
6 it is my client's view that the ultimate value of the
7 Demand/Supply Plan hearings and all the time, effort
8 and money that has gone into this process over the past
9 few years is that it can be a very important vehicle to
10 effect this change for a new regulatory regime.

11 Now, AMPCO agreed on Monday to an
12 adjournment to come to the table to hear from the
13 parties as to what was being offered and what the
14 expectations were and, among this, the government's
15 views were paramount.

16 If I could just read you one brief
17 paragraph from a very recent speech of Minister
18 Charlton, the Minister of Energy last Monday night at
19 the Fourth Annual Canadian Independent Power
20 Conference, I think it helps to put into context my
21 client's concern.

22 The final paragraph of the Minister's
23 speech reads as follows:

24 Our top priority in making the
25 necessary changes in Hydro and the public

1 review processes will be to ensure that
2 we meet a new and different electrical
3 energy future efficiently and
4 effectively. Reform is a top priority
5 for the government.

6 For AMPCO, the threshold question at
7 these discussions is the position of the government as
8 to whether these discussions could be a real vehicle
9 for change.

10 Now, AMPCO is not saying that whatever
11 would come out of the discussions of the parties in
12 this room would be absolutely the basis or framework
13 for a new regulatory regime in the province, but for
14 AMPCO the threshold is we need the government, we need
15 a commitment from the government that the discussions
16 that take place would be legitimate and would be taken
17 seriously by the government and as a foundation stone
18 for regulatory review.

19 And, as you can see from the proposal,
20 and as Mr. Mark has discussed, we didn't get that from
21 the Government of Ontario.

22 So, in our view, and unfortunately we
23 didn't even get to first base in our discussions of the
24 past couple of days, if we had a commitment from the
25 government we could hang our hat on, then perhaps these

1 other issues of categorization would follow, but that
2 is the threshold that AMPCO would require to
3 participate and we didn't get that.

4 So we are recommending that the
5 adjournment not be granted and that the Northwatch
6 motion be scheduled for Monday.

7 In the event that the Board does grant
8 the adjournment and enter into this discussion process,
9 AMPCO would strongly support the views submitted by
10 others that the filing deadlines be postponed until the
11 new year.

12 Those are all my comments.

13 THE CHAIRMAN: Thank you.

14 Mr. Hamer.

15 MR. HAMER: Mr. Chairman, two principal
16 points. My clients see no reasonable prospect of
17 success in reaching any helpful negotiated resolution
18 of significant issues in this hearing.

19 THE CHAIRMAN: And by that do you mean
20 unanimity?

21 MR. HAMER: Any resolution which will
22 assist the Board in shortening the hearing or
23 streamlining the hearing, Mr. Chairman.

24 I can tell you today what others say they
25 can't tell you until January the 14th, that my clients

1 see no prospect, as Mr. Heintzman said in answer to Ms.
2 Patterson the other day, of agreeing to take nuclear
3 off the table.

4 If nuclear remains on the table I can see
5 no prospect by virtue of the statute, if nothing else,
6 that any other supply option comes off the table.

7 Under your jurisdiction, in my
8 submission, you are obliged to consider reasonable
9 alternatives to various options which are placed before
10 you by the Proponent or otherwise.

11 So that on January the 14th I would
12 expect to be telling you that my client proposes to
13 call its evidence, as to which it has given notice,
14 relating to planning concepts and assumptions, demand
15 management, NUGs, the Manitoba Purchase, and then
16 nuclear, and then the overall issues.

17 And during these past three days it has
18 been stated over and over - and I haven't heard any
19 disagreement - that a party to this proceeding,
20 whatever happens between now and next week or January
21 the 14th, is always entitled - and I think this is Mr.
22 Campbell's turn of phrase - to a second kick at the
23 can.

24 MR. B. CAMPBELL: Not mine.

25 MR. HAMER: Oh, he said cat.

1 MR. B. CAMPBELL: No, I didn't use that.

2 THE CHAIRMAN: He might like to amend.

3 MR. B. CAMPBELL: It wasn't me in any
4 event.

5 MR. HAMER: Now, where will you be on
6 January the 14th if you grant this adjournment. I
7 notice that no one on the proponent's side took you
8 through the timetable in any great detail, but where
9 you are on January the 14th is that the parties who
10 agree with this process will come and tell you of some
11 definitions of categories and some categorization of
12 issues and they will tell you about discussion of the
13 ADR regulatory process and referrals to other process.

14 There is nothing there that will
15 streamline the process. You will have a list on
16 January the 14th from some, and you will have others
17 saying we would now like to call our evidence, please.
18 And can anyone reasonably expect that if AECL wishes to
19 call evidence on nuclear Mr. Poch will say I have no
20 evidence to call. It stretches credulity.

21 Now, as Mr. Mark has told you, and you
22 will find that on the document that was delivered to
23 you, there was space for people to sign who had been
24 there but did not agree with the process. We declined
25 to sign the document at all because, in our respectful

1 submission, it does not fairly represent the
2 discussions between the parties.

3 The straight answer to Dr. Connell's
4 question: Is there a Phase 2; yes, there is. And it
5 breaks into three parts: The first was to conclude on
6 January the 18th, the second to conclude on February
7 the 22nd, and the third to conclude on March the 8th,
8 and those dates only disappeared from the document when
9 it was suggested, and I read from Ms. Findlay's notes:

10 You don't have to put an entire
11 document to the Board to get a process
12 going.

13 That is what this is all about.

14 It is getting a process to the Board, or getting a
15 process going and it is putting part of the story to
16 you.

17 I would like to speak to the consensus
18 versus majority versus unanimity problem. The
19 facilitator will say frequently: We appear to have a
20 consensus emerging that, and for the first day or two
21 we say, no, there is no consensus here, and finally we
22 get to the point: Well, I have a special meaning for
23 consensus - and it's not what the dictionary says, I
24 won't read it to you - unanimity, it is a substantial
25 majority.

1 And, as Mr. Campbell was candid enough to
2 say on Monday, this process will create outliers and
3 the first outlier created was Mrs. Mackesy who departed
4 after about an hour and a half or two hours very
5 concerned, she said, that there was no record being
6 created of this. I believe she was the only individual
7 person without a lawyer who was present at that
8 proceeding, there were one or two groups unrepresented
9 by lawyers, but the one member of the public who was
10 there on her own behalf felt uncomfortable with that
11 process and departed and has not been back. I believe
12 she will speak for herself later today. I have had no
13 contact with her whatsoever, I studiously avoided
14 having any conversation with her since her departure.

15 Now, my client -- obviously it's an
16 unstated agenda of many to make my client an outlier.
17 Well, if my client is going to be an outlier, frankly,
18 I prefer that we play the role of the villains or the
19 spoilers or whatever you like openly in your presence,
20 in your full view, and not as reported to you if you
21 should happen to read the newspaper accounts of what we
22 are doing out there, as may well happen, or not by
23 whatever cryptic information you get from time to time
24 about how progress is going or if questions are asked
25 of you as to how you might react to such and such a

1 proposal.

2 I prefer, as Mrs. Mackesy said she
3 preferred, to have this whole process take place in
4 your presence and what you call it is a hearing of the
5 Environmental Assessment Board.

6 What goes on out there is horse trading.
7 There is no other word to describe it fairly, it is not
8 some sort of refined scientific colloquy, it is horse
9 trading, and you cannot expect a member of the public,
10 in my respectful submission, to come in and feel any
11 more comfortable in that process than if it were
12 conducted behind closed doors as a confidential
13 negotiation.

14 Now, I won't quibble about the words
15 consensus or unanimity any more. What this process
16 creates is not anything other than an alliance. It may
17 be a new alliance between Hydro and other parties, we
18 say it is a misalliance, but nonetheless it's an
19 alliance and that's all.

20 The allies may be able to come to you and
21 advise you on January the 14th, we have got a list, we
22 have got some categories and we have had a discussion,
23 but what the alliance can't do on its own is create a
24 resolution of any substantive issues, in my respectful
25 submission. The alliance has significant opponents who

1 are here for the long haul.

2 Now, I understand that the Board, and I
3 believe this is in some of the Board's written
4 directives, has said that it is in favour of parties
5 creating alliances, quite correctly. You don't have
6 many people saying the same thing over and over again
7 and there have been alliances since this hearing
8 started, and they have shifted and they'll continue to
9 shift, but what you are asked to do this afternoon is
10 to suspend this hearing in order to permit Ontario
11 Hydro and certain other parties to cobble together a
12 new alliance. That is all it is. It is not going to
13 decide anything, and it is not, I would hope, going to
14 persuade you of anything, there will be evidence to be
15 heard once the new alliance has been put in order.

16 And I say, with all due respect, that
17 there is no good reason to suspend this enormously
18 expensive proceeding in order to permit some parties to
19 create that new alliance.

20 And in the final analysis it is our
21 submission that the weight of the facts and the weight
22 of the scientific and technical opinion is in favour of
23 the nuclear option. We are prepared to complete the
24 process, placing the facts and the opinions before you
25 in the form of evidence. We don't think it's

1 constructive to negotiate the facts or the opinions.
2 We think it is highly improbable that any such
3 negotiation will ever achieve a productive result.

4 Now, if Hydro were to say we are going to
5 withdraw our application, that would make the picture
6 completely different. If the Board were to decide to
7 allow Mr. Greenspoon's motion, that would make the
8 picture completely different.

9 Neither of those things has happened yet.
10 Hydro doesn't want to say we want to withdraw, Mr.
11 Greenspoon says he doesn't want to bring his motion or
12 argue his motion and, in my submission, in the meantime
13 this process ought to carry on.

14 Those are my submissions. Much obliged.

15 THE CHAIRMAN: Thank you.

16 Mr. Bullock?

17 MR. BULLOCK: Mr. Chairman, I have
18 concluded that it's the height that affects the
19 microphone and I'm glad I'm the size I am.

20 [Laughter.]

21 CNA attended these sessions over the last
22 two and a half days, Mr. Chairman and Members of the
23 Board, and CNA also declined to sign the document as
24 being inaccurate, an inaccurate representation of what
25 went on.

1 It is difficult to have the flavour of
2 those kinds of discussions but, in my respectful
3 submission, the document before you, the draft
4 proposal, is not an accurate representation of what
5 went on.

6 You can obtain a somewhat better idea,
7 Mr. Chairman, if you look at the white board to the
8 side here and indeed it corroborates what Mr. Mark said
9 about the dates. I think certainly it was my
10 understanding that those dates were purposely removed
11 in the hope, in the wish that the revised document
12 would find favour with the Board.

13 CNA does not support the proposal before
14 the Board. CNA's submission is that we proceed on with
15 the motion and we proceed on with the hearing in due
16 course.

17 CNA does not, and these are my final
18 instructions by the way, Mr. Chairman, I have had the
19 opportunity to discuss at every stage with my client
20 what proposals were being put forward.

21 CNA does not wish to be coerced into some
22 sort of Board mandated process that has no reasonable
23 chance to succeed. By that, Mr. Chairman, I mean a
24 reasonable chance to significantly shorten the duration
25 of the hearing. And CNA certainly doesn't want to be

1 involved in a process that can only increase the costs,
2 particularly to non-funded parties.

3 In the final analysis, Mr. Chairman, it's
4 CNA's submission to you, it's my submission to you that
5 the parties really wish to have private discussions and
6 they wish those private discussions to be cloaked
7 somehow in a mandate of this Board.

8 The parties are perfectly free to conduct
9 their private discussions but my submission to you is
10 that those private discussions ought not to attain some
11 other character and be cloaked with a mandate from this
12 Board.

13 My submission to you is is that there are
14 three key questions that the Board ought to be asking.
15 The first is: Why has this proposal come forward now?
16 I would ask the Board to consider whether this might be
17 an attempt by Ontario Hydro to simply obtain an
18 adjournment that they were denied earlier when we
19 started to deal with the capital program review.

20 My submission to you is that those kinds
21 of developments, that kind of capital program review,
22 the updating if you will, the almost constant updating
23 was something anticipated by the Board in its scoping
24 decision in March of this year and it's certainly
25 something that should not be of particular concern to

1 the Board at this point.

2 The second question that I would submit
3 ought to be asked, Mr. Chairman, is: What is the
4 purpose of the proposed process? And I have alluded to
5 that earlier.

6 My submission to you is that the only
7 legitimate purpose would be to permit various parties,
8 the allied parties as my friend Mr. Hamer suggested,
9 parties of like mind to consolidate their evidence,
10 reduce the numbers of their witnesses.

11 CNA has done that already. CNA has been
12 endeavouring to do that throughout this hearing process
13 and the question is: Why have other parties, like
14 minded parties not done the same.

15 The third question, Mr. Chairman, is:
16 What are the concerns about the proposal, what are the
17 concerns about the process proposed? And in that
18 regard I certainly concur with my friends Mr. Mark and
19 Mr. Hamer.

20 The undefined end date, the difficulty
21 that we have with the dates and the way that the
22 document has been revised, the funding issue certainly
23 is a concern, and an additional concern I would submit
24 to you, Mr. Chairman, is this: Is that there becomes a
25 real perception, as a number of my friends have alluded

1 to, of displacing the hearing of evidence with the
2 counting of heads.

3 [3:50 p.m.]

4 My submission to you is that that kind of
5 perception is not the kind of perception that this
6 Board wants to encourage.

7 And in conclusion, Mr. Chairman, CNA
8 would ask you to refuse the proposal before you to
9 commence this process, proceed on with the hearing, let
10 us proceed on with the motion on Monday as my friend,
11 Mr. Rodger, has suggested.

12 THE CHAIRMAN: Thank you.

13 Mrs. Mackesy?

14 MRS. MACKESY: Thank you, Mr. Chairman.

15 First, with regard to the draft proposal,
16 I have not had time to consider it quietly, but I
17 strongly suspect I will not be supporting it.

18 Second, I would like to address my
19 leaving of the meeting process part way through the
20 Tuesday morning session on November 17. I am going to
21 give some background first.

22 Point 1: In February 1990, the
23 Environmental Assessment Board notice for this hearing
24 targeted an area for radial transmission out of a
25 possible new Bruce nuclear station. The targeted area

1 on the notice map might or might not include family
2 farm property. The potential line out of Bruce is an
3 example of the transmission I spoke against in my
4 submission on Monday, November 16, in Volume 171 of the
5 transcripts, beginning at line 18 on page 30129 and
6 continuing on to line 8 on page 30130.

7 Point 2. Myself and my brother, Jim
8 Cullen, applied for participant status at hearing to
9 make our views known. In order to join in the
10 cross-examination, to get better information on which
11 to base a presentation on final argument, I changed my
12 status to that of part-time party.

13 I was preparing that presentation, as I
14 mentioned on page 30135 of Volume 171 at lines 11 to
15 14. Unfortunately, I might have misspoke myself on
16 Monday because line 12 reads: "Preparing a submission
17 on this hearing." I wish to correct that saying I am
18 not preparing a submission on this hearing, but rather
19 for the hearing.

20 Points 3. Mr. Cullen and myself looked
21 upon the hearing as a chance for ourselves and others
22 to address a wide range of topics in an open,
23 on-the-record public forum. In particular, it was a
24 chance for those who might have to directly host a
25 generation or transmission facility or have one in

1 their vicinity, to make their opposition known and to
2 make comments on the electricity system and planning
3 process.

4 We see Ontario Hydro's November 10
5 proposal, received by me on the 13th and by Mr. Cullen
6 on the 16th, as bypassing this open, on-the-record
7 process.

8 Point 4. On Monday I made a submission
9 on Ontario Hydro's proposal and that submission appears
10 in Volume 171 between pages 30127 and 30125.

11 Point 5. After the formal hearings
12 closed on Monday, I stayed for the meeting of parties
13 and participants. I came back Tuesday morning to
14 attend the continuation of the meetings. Early that
15 morning, Ontario Hydro handed around a three-page item
16 headed 'Notes for Discussion, November 17, 1992',
17 compiled, we found out, by Bruce Campbell of Ontario
18 Hydro, Jay Shepherd of IPPSO, David Poch of CEG and
19 Geofrey Greenville-Wood of SESCOI.

20 The first page listed the categories of
21 issues with two or three examples for each, and then
22 there was a four-line section on the public review
23 process.

24 On both Monday and Tuesday I was
25 uncomfortable with what I considered to be the backroom

1 deal aspect that I had spoken about in Monday's formal
2 proceedings. I spoke to that concern at both meetings,
3 and after speaking to the concern twice on Tuesday
4 morning I left, because I have felt my remaining there
5 would mean I condoned the process, even though I had
6 spoken against it.

7 I have heard that there was some concern
8 about my leaving. I have also heard a rumour that the
9 facilitator is being blamed for my leaving. To my mind
10 it would not be fair to blame the facilitator, rather
11 the blame should go to this process for removing
12 matters from the formal hearing. Doing that may work
13 to deprive some people of their day in court, so to
14 speak, in ways such as not permitting them to speak on
15 some issues and such as sweeping some other issues into
16 another process to which they do not get access, or
17 might not get access.

18 6. Not all parties and participants can
19 attend the facilitated meetings. Because there are no
20 transcripts, people with status who are not there
21 cannot see what has gone on. This deprives them of the
22 chance to determine how issues could come to be
23 eliminated, could come to be deferred or could come to
24 be kept alive for the hearing.

25 Without transcripts, the decision-making

1 that goes into the development of the public review
2 process will not be apparent.

3 Transcripts of both the Issue List and
4 review process matters may be useful in the future if
5 people want to understand the background to some result
6 of these alternate processes. They might even be
7 useful for people attending on a daily basis to check
8 what went on, although I understand most people at the
9 table prefer the screening protection that an
10 information summary provides.

11 I personally do not believe that a
12 summary of a session's events is an acceptable
13 substitute for the transcripts. Even with the best
14 will in the world summaries filter events through
15 someone else's biases and sensitivities.

16 Point 7. My qualms regarding the use of
17 the issue review process still remain as they are
18 outlined in Monday's transcripts on page 30134, at
19 lines 6 to 14, that my concern is for the situation of
20 both participants and parties.

21 Point 8. I still think Ontario Hydro
22 should bring forward some evidence as to what sort of
23 plan it is presenting. I would also like to see on the
24 record, if these meetings go forward, which parties
25 requested the dropping of the eliminated issues, which

1 parties requested the deferral of the deferred issues
2 and who requested the retention of the alive issues.
3 In short, I would like to know who, in addition to
4 Ontario Hydro, is doing Ontario Hydro's planning?

5 Point 9. The lack of adequate
6 opportunity for people to have input into Monday's
7 proceedings, the lack of transcripts of the meetings,
8 and my qualms about the Issues List were bad enough,
9 but they were not the only problems. A particular
10 matter at Monday and Tuesday's meetings was the
11 proposed public review process that I sometimes hear
12 described as a new regulatory review, which has been
13 incorporated into this hearing from, I don't know
14 where, and for, I don't know whose, interests. No
15 documented and expanded information on the anticipated
16 public review process was put forward in the short time
17 I was there, and yet I understand from the short time I
18 spent at the meetings that, (a), the review process
19 could almost assuredly be approved by the Board because
20 of the consensus of the wide range of interests
21 represented by the parties around the meeting table;
22 (b), the process could almost assuredly be accepted by
23 the government because of the DSP hearing board
24 approval, and (c), the process would quickly become the
25 basis of government regulation for electricity planning

1 into the next 10 years.

2 Now, I am basing my (a), (b) and (c)
3 statements on my recollection of what I have heard in
4 the meetings, but since there are no transcripts, I
5 could very well be told I am wrong or at least
6 misinterpreting what was said.

7 I am very uncomfortable with the idea of
8 this group appropriating to itself in this closeted
9 atmosphere the crucial formulation role in electricity
10 regulation process, and then determining what issue
11 should and should not go to that process. And I am
12 appalled to find that I am expected to go into a
13 fast-paced, busy schedule of plenary sessions and
14 workshop sessions for designing this process. For all
15 I know, I am being asked to hack my own head off,
16 figuratively speaking, and what is worse, I am afraid I
17 will be used as a decoy to quiet apprehension amongst
18 some other people outside this alternate approach
19 process about the public review process being designed
20 there - that was if I remained in the alternate
21 approach process.

22 Over and above concerns about the origins
23 and format of the proposed public review process, the
24 following are a few scattered questions that roll off
25 the top of my head about it. I don't know whether the

1 Board would like to hear them or not?

2 THE CHAIRMAN: Go ahead.

3 MRS. MACKESY: Thank you.

4 (a), what topics will go before the
5 public review and who will determine them; (b), who are
6 the members of the review board or whatever, and how
7 are they appointed; (c), who makes the decisions; (d),
8 are some groups to be funded; (e), who will be allowed
9 input and funding; (f) how will people become aware
10 that something is afoot so that they would do well to
11 respond to it by trying to take part in the review
12 process; and (g) is this process being set up to bypass
13 the operation of the open environmental assessment
14 hearing process, and how do these two processes differ
15 or fit together.

16 Those are just a few preliminary
17 questions. I am sure more would occur later on.

18 Point 10. Mr. Chairman, as summary to my
19 remarks in this part of my submission, I feel the
20 alternate process is a rushed, forced hothouse
21 atmosphere -- I feel there is a rushed, forced hothouse
22 atmosphere this this process. It is not based on
23 sufficient publicly available information. Some
24 parties and participants cannot follow the process
25 because there are no transcripts, and there is, in the

1 time I was there, there did not seem time to allow for
2 sober reflection.

3 Respectfully, I think it is wrong to move
4 away from a formal hearing process with the Board
5 present and transcripts and proper notification.

6 Point 11. Finally, in view of the time I
7 have spent on these developments since last Friday and
8 the possibility of more fallout from them, I would like
9 to request a revised filing date, perhaps till early
10 January of 1993.

11 Thank you very much for the opportunity
12 to say what I think.

13 THE CHAIRMAN: Thank you.

14 MRS. MACKESY: Thank you.

15 THE CHAIRMAN: Mr. Smith?

16 MRS. SMITH: Mr. Chairman, I am not the
17 Smith that appeared before you before, but I think in
18 view of what Ms. Mackesy has said, I would like to be
19 the Smith that appears before you now.

20 I would like to tell you how I became
21 involved with this hearing. I became involved in
22 August of 1992 when Ontario Hydro announced at a public
23 meeting that they were planning to proceed with an
24 environmental assessment study of the STR project,
25 Sudbury to Toronto reinforcement project, and that this

1 project would be a direct result of the Manitoba
2 purchase in hydraulics that they intended to develop in
3 the north of Ontario and that the need and rationale
4 for this was being determined at the DSP hearings,
5 which had been in place for about two years. It was
6 suggested to me by Ontario Hydro at that time that it
7 would be impossible for me to gain a seat at these
8 hearings. I did, however, find a group that was in
9 place that allowed me to join the hearings.

10 On September the 4th, I made a submission
11 to this Board and at that time I asked in writing if my
12 status could be changed from participant status, which
13 the group previously held, to that of part-time
14 intervenor. I was told at that time that intervenor
15 funding had already been assigned and that I would not
16 be eligible for any intervenor funding.

17 I have since had one conversation with
18 Gail Morrison, at which she told me -- she asked me a
19 couple of questions about whether or not I intended to
20 come on a regular basis and whether or not I intended
21 to call any witnesses if my status was changed. She
22 also then told me that I would have to wait for her to
23 call me back. I have not, to this date, heard whether
24 or not my status has been changed.

25 I became aware of these meetings on

1 Monday the 16th at 7:30 p.m. when I received a notice
2 in the mail saying that this process was going to be
3 taking place on Tuesday. I contacted Christine Martin
4 and she suggested that I come to these hearings, which
5 I did yesterday.

6 I am very unfamiliar with your process
7 and I have been listening very carefully trying to
8 decide what would be the best route for me to take.

9 I am not in favour of this agreement in
10 any way at all. I did not sign on the paper at all
11 because I didn't feel that it gave a fair chance for me
12 to say that I was present at these hearings. I could
13 not participate because I didn't understand the issues
14 well enough. I was present here, but I am not in
15 agreement with this.

16 I will read you something that I have
17 prepared to write here. I can make a further written
18 summation or oral summation to you once I have had a
19 better chance to listen to what other people are
20 saying, collect my thoughts about it and understand the
21 format in which you are probably accustomed to hearing
22 someone in my position speak.

23 We are in disagreement with the draft
24 proposal put forward by this group. We believe this
25 suggested form is contrary to the intentions of the

1 environmental assessment process, and the voice of
2 opposing minorities tends to be lost in general
3 consensus discussions.

4 We received notice of these meetings well
5 after the meetings had begun. The last few days
6 indicate to me that the consensus on issues will never
7 be reached by the participants and will require greater
8 expenditure of time and resources than has already been
9 experienced in the environmental assessment hearings
10 with the final results based on negotiating prowess,
11 rather than factual evidence.

12 Our wish is for the Board to abandon this
13 new process entirely and without delay revert back to
14 the hearing form to proceed with the Northwatch motion.

15 I was very surprised to hear a number of
16 things that happened during this that I would like to
17 bring to your attention, whether or not they are normal
18 procedures I don't know. But Mr. Campbell, the lawyer
19 for Ontario Hydro, said that he would be willing to
20 have people from Ontario Hydro to this process to
21 discuss issues and things that had changed in Ontario
22 Hydro and that perhaps were a little more relevant to
23 what was going on there now.

24 I was under the impression that Ontario
25 Hydro had already presented their evidence. I don't

1 know whether this would be considered evidence or not,
2 but I think certainly think that it would be giving a
3 different view to the hearings than have been heard.

4 I am very concerned that there is no
5 public transcript available because I feel that I was
6 unable to attend Tuesday, not realizing what was
7 happening. Had there been a public transcript, I would
8 have been able to read through this and become involved
9 with it. I certainly think that a process like this
10 should have a transcript available for the public,
11 should anyone want to refer to it.

12 I also brought up an issue today when
13 they suggested that some of these hearings be held in
14 the north. I am a non-funded intervenor; it would be
15 extremely difficult for me to get to these
16 far-out-of-the-way places, and in the entire two days
17 that I spent here, it was the only time I heard total
18 silence. No one could respond on this issue.

19 I agree with what Mr. Mark has said to a
20 great extent, and I agree with what Mr. Hamer has said
21 also. I don't feel that there was really any consensus
22 of agreement that took place over these two days, but
23 rather, that some people expressed their wishes over
24 and over again, and I suppose in legalese, managed to
25 be able to write down things that would satisfy those

1 needs.

2 So I would request that you not go to a
3 process like this. I have spent a great deal of time
4 reading the Environmental Assessment Act and other
5 related documents in trying to find out how to proceed
6 in that process, and I think that it would jeopardize
7 my position if I had to learn some other new process or
8 be involved in some new process.

9 I also might say that I found that the
10 procedures - maybe this is normal, I don't know - but
11 the procedures that were discussed and the process that
12 was being discussed was being discussed in the way that
13 I might talk about spending \$20,000. It didn't seem to
14 me that this was the right type of process that should
15 be used to discuss what the environmental impact would
16 be for a 25-year proposal that Ontario Hydro has
17 planned for this province.

18 Thank you very much.

19 THE CHAIRMAN: Thank you.

20 MRS. SMITH: Thank you.

21 THE CHAIRMAN: Ms. DeQuehen.

22 MRS. DeQUEHEN: I would very much like to
23 come back and report what has taken place over these
24 days.

25 I really don't know how you report a

1 proceedings which has taken place at such obviously
2 different levels.

3 Yesterday I attended the whole
4 proceedings and thought it was more or less over, they
5 were just going to tidy up this morning, but I got a
6 lift in very early this morning and attended this
7 morning's proceedings, and I must say that I was and
8 still am completely shattered.

9 I would say that what happened this
10 morning was equivalent to a palace coup. They got what
11 they wanted and have been wanting for a long time. And
12 I was shattered because, frankly, the whole thing, and
13 this proposal for adjournment, has very little to do
14 with this hearing whatsoever.

15 [4:10 p.m.]

16 There has been a semblance of some sort
17 of process. Yesterday in fact when they state everyone
18 worked so hard, there were very few people there, there
19 weren't a lot of these people.

20 I began by taking it seriously and trying
21 to put forward our real concerns about this negotiating
22 process and the need for transcripts, and I do hope
23 that I will have occasion to hand in a written
24 submission which I am working on.

25 But it soon became obvious that in fact

1 it was an extremely laid-back affair and they were not
2 really that interested, and it was perplexing, but this
3 morning I think it all became very obvious.

4 Their intent and their aim, quite simply,
5 is to get rid of this hearing process. I am convinced
6 that the reason they want this adjournment and these
7 facilities and funding is to avail themselves of this
8 opportunity in order to work out the details of a
9 process which would suit them better.

10 This, of course, will take place at two
11 levels. They will have certain little workshops to
12 look as though they are working on issues, et cetera,
13 but that very obviously is not the intent. And I think
14 you all must have heard the merriment in the corridors
15 when they came out and there was a consensus.

16 The Hydro people were annoyed about the
17 issues, but they never stood up here and told you the
18 truth of those proceedings, and there is no record
19 because they refuse to have transcripts and they refuse
20 to have transcripts in future. They compromised and
21 said there would be some sort of information service
22 but they would have no record.

23 The rest -- a larger part of this morning
24 was taken up by, I would say, lobbying and pressurizing
25 the lawyer from the Ministry about what they really

1 want, which is a future review process, and that is not
2 to run parallel with the hearing process but that is to
3 replace the hearing process.

4 The categorization of issues which was
5 discussed was very much shop dressing, that was not the
6 real agenda behind the whole meeting, I didn't leave
7 but I did remove myself from the table, it was so
8 obviously nothing to do with the public and it was so
9 obviously nothing to do with this hearing in
10 particular.

11 I sat there for these two days and it
12 was -- I have no idea whether the Board knows the truth
13 of the matter, it's possible that you do and possible
14 that you approve, but I do not think it is ethical of
15 you to give this adjournment which is really just a
16 disruption of the hearing process, particularly when
17 their object is really to get rid of this hearing
18 process and to replace it by something which they
19 prefer.

20 I would say they have found this process
21 does not suit their particular skills. Instead of
22 trying to amend their skills so they can better take
23 part in the process, it is much easier for them to just
24 get rid of this process and replace it by something
25 which they consider better.

1 I am not at all certain that it is better
2 for environmental protection and it would be disastrous
3 because it will fail in view of the public
4 participation effect.

5 I really am shattered and I hope that I
6 will have a chance to make a submission when we return
7 and to give in a written submission analysing the
8 effects of what we believe would happen in the event of
9 the changes which they are seeking.

10 Thank you.

11 THE CHAIRMAN: Mr. Rogers.

12 MR. ROGERS: Thank you, Mr. Chairman,
13 Members of the Board.

14 Well, as the only member of the confused
15 category I have a few brief comments to make, although
16 I'm going to try and recruit the last three speakers
17 for my group.

18 (Laughter)

19 I know better now, having attended
20 several of the sessions that have taken place over the
21 past two days, what we're about here and I can tell you
22 that my client does not take a position as to whether
23 or not you should allow this process to go forward or
24 at least sanction this process. If you do, we will
25 take part in it.

1 I have a couple of very simple
2 submissions to make to you which I ask you to consider
3 in determining these issues however.

4 My client has a very simple message which
5 it wants to deliver to this Board and the message is as
6 to the great use that natural gas can be in allowing
7 Ontario Hydro to reduce the cost of producing
8 electricity for the people of Ontario, and they asked
9 me to take this message a couple of years ago and get
10 on this boat and deliver it to you.

11 And I don't care whether we get off the
12 boat and get on Mr. Campbell's car so long as I get an
13 opportunity to deliver the message to you, sir, and the
14 sooner the better. And the boat is seemingly running
15 out of steam, I must say, of late.

16 If it's felt by the Board that this
17 process that is proposed will be of benefit to you and
18 speed the conclusion of this hearing, then we will
19 cooperate and try to do that, and maybe it will help me
20 deliver my message to you.

21 However, there are a couple of problems
22 that I see, and I've had some experience before with
23 hearings like this from other angles and I'm very
24 sympathetic to the Board and the problem you have in
25 trying to orchestrate this hearing, always have been,

1 and my client is quite receptive to innovative
2 approaches to solving these difficult problems of
3 public policy that you're charged with.

4 I think creativity is one of the
5 advantages of administrative tribunal processes as
6 opposed to the court system, for example, and so we
7 will cooperate.

8 And we ask you to consider a couple of
9 points, and this really affects some of the people,
10 some of the small parties who have spoken this
11 afternoon, I have some of the same concerns. Even
12 though I don't pretend to represent a small party, I
13 represent a large association composed of relatively
14 large companies with substantial resources, but the
15 same problems apply to us.

16 You see, if we have this alternate
17 process going on, just as we have had for the past few
18 days -- and may I tell the Board that I was at those
19 meetings but not this morning when the palace coup
20 allegedly took place, I was not there then, although I
21 came at nine o'clock, I was the only one who did.

22 MR. MARK: Wrong palace.

23 (Laughter)

24 MR. ROGERS: Yes, that's right. I was
25 confused enough to believe them when they told me it

1 started at nine o'clock.

2 But the point I wish to make is this, and
3 it's a serious point, I don't mean to make fun of it:
4 If you have a process like is now being proposed it's
5 important in order to protect your interest - and my
6 client, as I say, has a fairly narrow interest - to be
7 there all the time.

8 In your hearing, which has been going on
9 now for quite some time - as I know you are only too
10 well aware - a party with a particular interest, and
11 we're trying to keep focused on the interest that we
12 have in this hearing and not be distracted, can be
13 addressed because I know what your schedule is and you
14 afford an opportunity for the parties to come when my
15 topic is under consideration to take part in the
16 process, and that's good.

17 It will be better, and my client would be
18 better served, I'm sure, if I were here all the time,
19 but it's very, very expensive and we are satisfied with
20 the arrangements that have been made to date.

21 However, in this process that is being
22 suggested to you I submit that each party who wants to
23 be sure that his or her point of view is taken into
24 account has to be there all the time. And I'm sure my
25 friends will forgive me, notwithstanding the fuss about

1 reporting to you what went on, telling you one little
2 story about one afternoon.

3 I had been sitting there for a day and a
4 half or so, and other business took me away from the
5 meetings for about a half an hour and when I returned I
6 found that for the first time in a day and a half the
7 word natural gas had been mentioned, somebody suggested
8 that gas turbines should be one of those things taken
9 off the table.

10 So I use that point to demonstrate that
11 we cannot afford to miss a minute of these proceedings
12 and that's very expensive. I mean, there's no
13 timetable, there's no schedule, you have to be there
14 and that is very expensive for all of the parties and
15 particularly for those that haven't asked for any
16 funding.

17 Now, I anticipate that at the conclusion
18 of the case my client will make a submission with
19 respect to costs and if you're satisfied that they have
20 contributed to the hearing, I'm hopeful that you will
21 make some provision for costs for them.

22 But there will be an unrecoverable cost
23 component for my client and indeed for all of these
24 people and all of these parties, and I just ask you to
25 consider that we will have to be there every minute of

1 this process, this ADR type process.

2 THE CHAIRMAN: That is undoubtedly a
3 problem, but is that a reason for not embarking on the
4 process?

5 MR. ROGERS: No. No, sir, it isn't.
6 It's not a good reason for not embarking on it if the
7 benefits otherwise outweigh that cost. I simply wish
8 to draw to the Board's attention the practical reality
9 of the situation and the cost that that entails, that's
10 all. My point goes no further than that.

11 And certainly if you're persuaded that
12 the benefits outweigh the costs, then they'd be well
13 worth it.

14 I have no instructions about the request
15 for the short adjournment for the week, but I'm
16 confident that my client would not violently oppose
17 that and so I make no submission on it. I don't oppose
18 the request for a one-week adjournment now for parties
19 to seek instructions.

20 I do ask you however, I'm still
21 concerned, sir, about the point I made the other day
22 about sort of an open-ended process here and I'm
23 confident, now having heard your comments, that the
24 Board is equally concerned about that. I want the boat
25 to land so I can deliver the message.

1 The Board has long had in place a
2 schedule for the filing of evidence. My clients would
3 like the Board to hold to that schedule, but I must
4 say, having listened to the parties this afternoon, I'm
5 fairly sympathetic to those who say that if they're
6 involved every day in this ADR exercise that they'll
7 have difficulty in doing that, but my instructions are
8 that we would like to have the filing of evidence
9 scheduling adhered to.

10 But I understand that some parties are
11 going to have a lot of trouble meeting that if we go
12 off in this other direction.

13 So finally I'll just say in conclusion
14 that my client does not take a position as to whether
15 or not we should do this. You're the masters of your
16 own procedure and we are content to live with your
17 decision and we will cooperate and try to use whatever
18 vehicle you give me to deliver my message.

19 But it should be understood I think, and
20 I'm sure it is by the parties, that I ask the Board to
21 understand that we will embark on this process if you
22 encourage it, but we do so without prejudice and
23 without waiving any rights that we have as a
24 participant in the public hearing process.

25 Thank you, Mr. Chairman, those are my

1 submissions.

2 THE CHAIRMAN: Have I missed anybody? Is
3 there anyone who hasn't spoken who wants to speak?

4 Is there anyone who wants to say anything
5 in the nature of reply?

6 Ms. Marlatt?

7 MS. MARLATT: Mr. Chairman, just a couple
8 of points that clarify at least where I had understood
9 the discussion was going.

10 I did not understand that we were to give
11 you a report back from everything we talked about over
12 the last three days. I understood we were to come back
13 to you with a further detailed proposal.

14 I certainly would not tell you that this
15 draft proposal tells you everything we talked about,
16 including other important issues. It does not, in my
17 impression, but it does give you the sense of where
18 some of us felt there was a consensus in terms of a
19 majority of a draft proposal to come before the Board
20 today. So that is with regards to the draft proposal.

21 AECL made some submissions about the
22 nuclear option and what I had stated the past three
23 days - and I think we were all at the same meeting -
24 was, I am not certain why this proposal would be
25 limited to approvals, why that would be the only thing

1 considered within this process.

2 Many things are relevant to this Board
3 that are not subject to approval, as you have yourself
4 said in your last decision about the demand management,
5 that it is not necessarily subject to approval but is
6 something you must consider in order to come to some of
7 your other approvals.

8 And I would say that there are many
9 matters that the intervenors here and the other parties
10 can discuss that have to do with those types of matters
11 as well as planning issues that do fall short of
12 regulatory changes but are squarely within the
13 jurisdiction of this Board.

14 That does not mean that we come back to
15 you and tell you we have sorted out the EA process
16 without a hearing, however, we can come back to you and
17 say that some of us, hopefully most of us, agree on
18 certain issues about how planning could occur that
19 would be a more public process, and hopefully the Board
20 would find that interesting to listen to, perhaps
21 persuasive, and hopefully not all of us will have to
22 drag in all of our consultants to give all of their
23 evidence on those points.

24 So that's my submissions with regards to
25 the substance of the negotiations.

1 I don't see it as being limited to the
2 approvals process and, if it was limited to that, I can
3 see that there would be problems. I see it as a much
4 broader process than that. But those would be my only
5 two submissions that I would like to give with regards
6 to clarification.

7 The transcript issue did come up. I
8 think that, as we've noted in here, it was not
9 determined whether or not there should be transcripts
10 and I have some sympathy for both sides as to whether
11 or not there should be transcripts. I don't think that
12 was determined. I thought at the beginning we stated
13 we all wanted it - I thought all, I could be wrong -
14 that we all wanted it to be a public process; whether
15 or not that included transcripts, whether or not that
16 was an essential part of it being a public process was
17 still something we had to talk about.

18 But I had thought that we were all there.
19 I was certainly there under the understanding that we
20 had intended this to be as public a process as we could
21 make it and we would sit down and talk about the pros
22 and cons of different ways and different methods we
23 could utilize for that end result.

24 Thank you.

25 THE CHAIRMAN: Thank you, Ms. Marlatt.

1 Anybody else before Ms. Couban?

2 Ms. Couban.

3 MS. COUBAN: Thank you, Mr. Chairman. I
4 have just a few points.

5 Firstly, I feel I have to address the
6 point that has been raised by a number of the people in
7 opposition to the proposal with respect to describing
8 the process before you as an open-ended process.

9 AECL, Mr. Hamer, referred to a number of
10 phases and he suggested that there would perhaps be a
11 Phase 1 up to January 14th and then talked about other
12 phases: Phase 2, Phase 3 and Phase 4, and suggested
13 that we, as a collective group who brought this
14 proposal forth before you, were somehow hiding from you
15 the subsequent phases.

16 I'd like to share with you how, in my
17 view, the proposal before you came to be. There were a
18 number of different proposals discussed over the last
19 two days, there was a proposal that had a timetable of
20 March in it.

21 This morning on behalf of my clients I
22 came to the group and I advised the parties that that
23 timetable was unacceptable and the parties willingly
24 and cooperatively discussed a change which ended up
25 with a timetable that you see before you.

1 That's I think an example of what
2 happened over the last two days. It was an
3 evolutionary process; discussions took place and there
4 were different issues that were discussed before we
5 came up with this proposal to bring before you.
6 [4:30 p.m.]

7 With respect to the January 14th
8 deadline, I would concur with your comments, Mr.
9 Chairman, that that is a final date for the process of
10 categorization, that I would suggest is a self-
11 contained process.

12 By January 14th if we are successful, we
13 deliver to you a product, the product would be a clear
14 categorization of the various issues.

15 I would submit that that alone is going
16 to improve the decision-making process that this panel
17 has to make.

18 On that date of January 14th, it may well
19 be obvious that the thing to do, the most appropriate
20 thing to do, is to continue with the hearing.

21 It may also be that we have to continue
22 the discussions but with respect to a different task,
23 and with respect to the issues that are before this
24 Board, that task will involve discussing how to present
25 the issues that we have all determined are issues that

1 this Board has to resolve.

2 With respect to other issues that we have
3 agreed are not within this Board's jurisdiction, there
4 may be other discussions that continue, but that would
5 be in another forum and through other means which we
6 have to discuss within this process of categorization.

7 But on January 14th I would suggest to
8 you there is a very good chance that we will have a
9 final product with respect to what this Board has to do
10 with those issues that we have determined are clearly
11 within this Board's jurisdiction. Perhaps there will
12 be some time needed to resolve amongst the parties how
13 best to present those issues that we have some
14 consensus on, but I would certainly urge upon you that
15 it is my client's view that January 14th, this process
16 of categorization ends.

17 With respect to some comments that Mr.
18 Mark said, he said that we are designing a process up
19 until January 14th. That is one of the comments that
20 he made with respect to the proposal before you. I
21 would suggest that that is definitely not what the
22 proposal says.

23 The process within that proposal will be
24 designed by December 9th. That is what the schedule
25 says.

1 He also referred to the fact that only
2 Ontario Hydro had instructions to endorse the proposal.
3 My clients clearly also are endorsing the proposal and
4 you have heard that there are many parties who have
5 great confidence that their clients will also endorse
6 the proposal.

7 I think it would be unreasonable to
8 expect that certain parties, particularly the
9 Aboriginal groups, who have clients who are not easily
10 accessible, could have instructions today to either
11 endorse or not endorse this very significant proposal.

12 Mr. Mark also suggested that in the
13 discussions over the last two days, parties remained
14 mum on the substantive issues. I would suggest that is
15 because what happened over the last two days was not a
16 discussion of substantive issues. It was just a
17 discussion of process and the categorization of issues,
18 but not a discussion of the substantive matters.

19 With respect to AMPCO's comments, Mr.
20 Rodger suggested that his client would need a
21 commitment from my client that the discussions if they
22 took place with respect to regulatory or legislative
23 reform, that the commitment would have to be there from
24 government that those discussions could be taken as the
25 foundation stone for regulatory reform.

1 With great respect, neither the parties
2 to this hearing nor this Board can make decisions with
3 respect to regulatory reform. Cabinet are the
4 decision-makers with respect to those matters. All the
5 government can say is that they are willing to listen
6 to the parties to this hearing with respect to their
7 views on these important issues. Any other commitment
8 I would suggest would be inappropriate.

9 With respect to Mr. Rogers', ONGA's
10 concerns, one of the points he brought up was that it
11 is difficult for his client, or he anticipates that it
12 will be difficult for his client in the suggested
13 process to know when their issues will be addressed so
14 that they can attend to bring forth their client's
15 views on those issues. He suggested there is no
16 timetable and no schedule that would allow his client
17 to participate in the suggested process.

18 I would suggest that that perhaps is one
19 of the first matters that could be discussed when the
20 process is to be designed if this proposal finds favour
21 with the Board in the next few weeks.

22 It's quite possible, I would suggest,
23 that we could develop a schedule which would identify
24 issues to be discussed on particular days, so that
25 clients such as Mr. Rogers' clients who don't want to

1 participate every day, could be informed as to when
2 their issues would be discussed by the groups.

3 Thank you, Mr. Chairman.

4 THE CHAIRMAN: All right. We have been
5 here for two-and-a-half hours and we are going to break
6 now and we will be back to give you some sort of
7 decision, I can't give you any idea what the scope or
8 extent of that decision will be, no earlier than 15
9 minutes and no longer than 30 minutes from now.

10 MR. B. CAMPBELL: Mr. Chairman, I did not
11 have an opportunity to go through my notes in reply.

12 I would simply like to say that on behalf
13 of Ontario Hydro we adopt and endorse the submissions
14 of Ms. Couban in reply.

15 THE CHAIRMAN: Mrs. Smith?

16 MRS. SMITH: I was just going to ask,
17 would it be all right for me to speak again for just a
18 brief second?

19 THE CHAIRMAN: If it's just a brief
20 second, yes.

21 MRS. SMITH: It would be.

22 I would like to also state that I feel
23 under this process I would not be presenting my
24 viewpoint or my evidence to a panel. I would be forced
25 into a situation where I would have to spar with

1 lawyers and people who are far more informed on the
2 issues and perhaps have hidden agendas, and I would
3 find this extremely difficult. I spent most of the two
4 days I was here trying to decide who is on the same
5 side and what the issues were, and this kind of thing.
6 And I think that that would constantly be going on, and
7 I think that for me it would be extremely difficult to
8 be able to present my evidence and make sure that my
9 interests were satisfied with this process.

10 I only heard the word "environment"
11 mentioned one time during these two days, that's I am
12 here, I don't know about the rest the people. But I
13 feel that I would not be in a position where I would be
14 able to present to someone something that I had
15 carefully prepared. I would be constantly having to
16 deal with three or four people discussing things and
17 terms that I didn't understand across the table and
18 being sort of forced to go along with that process,
19 unless I could intelligently put up some type of a
20 dispute or whatnot as to why I didn't want to go that
21 route.

22 Thank you.

23 THE CHAIRMAN: Thank you.

24 We are adjourned now, it is twenty to
25 five.

1 ---Recess at 4:40 p.m.

2 ---On resuming at 4:58 p.m.

3 THE CHAIRMAN: Please be seated.

4 As I said at the outset, we are very
5 grateful to the parties for the efforts that they made
6 in the past few days. Creative ways of dealing with
7 disputes and process is a popular concept these days
8 and one to which I subscribe. Alternative dispute
9 resolution is a subject to which many people have
10 devoted a lot of time and effort and thought.

11 However, we have before us today a
12 proposal which calls for an initial process ending on
13 January 14th. Assuming that that would be the final
14 date, we still consider that would be a substantial
15 investment of time and effort at this hearing. We are
16 faced with a significant number of parties who are
17 opposed to even considering working on that proposal or
18 who give it no chance of success. This presents a
19 substantial obstacle.

20 We are all of the view, taking everything
21 into account, that the risk of embarking on this
22 proposal is unwarranted. Therefore we will not proceed
23 with the proposal.

24 This does not mean to say that we
25 preclude in this hearing at another time, in other

1 circumstances, the introduction of mediation or other
2 techniques. As I said earlier, we believe in those
3 techniques and in their ability to help resolve
4 difficult issues.

5 What we do not see in this particular
6 case is that there is any useful purpose that will be
7 served in continuing with the proposal.

8 Therefore, we will adjourn until Monday
9 morning at ten o'clock when we will hear Mr.
10 Greenspoon's Northwatch motion.

11 MR. D. POCH: Mr. Chairman, before we
12 adjourn, we have a question before the Board of the
13 issuances of subpoenas for argument on that motion.

14 THE CHAIRMAN: I don't think it's
15 practical to deal with that right now, unless you are
16 prepared to do that...

17 MR. D. POCH: I had sort of taken it for
18 granted that they would issue as of right --

19 THE CHAIRMAN: You are absolutely right,
20 Mr. Poch, we have to deal with it before we can hear
21 the Northwatch motion. I had just completely forgotten
22 about that. If you will excuse me for that, I
23 overlooked that.

24 MR. B. CAMPBELL: Mr. Chairman, if the
25 Board is going to consider that matter, I certainly

1 want to have the opportunity to make submissions on it.

2 THE CHAIRMAN: Well, I think that
3 certainly you will have the opportunity. I understand
4 it's a contested issue and you certainly will have an
5 opportunity to make submissions on it. It's an
6 interesting issue.

7 Let me suggest this, we will deal with
8 the subpoena issue on Monday morning at ten o'clock,
9 and dependent on the outcome of that, we will then
10 schedule the Northwatch motion at an appropriate time.

11 If the subpoena issue results in no
12 further process we will hear Northwatch on Tuesday
13 morning, if there is further process involved, then we
14 will have -- including subpoenas, then we will have to
15 deal with that and set another appropriate time for the
16 hearing.

17 In any event, Panel 2 won't start until a
18 week next Monday which is -- what is next Monday?

19 Panel 2 will not start any earlier than
20 the 30th of November, any earlier than, and we will
21 just have to work that out somehow.

22 MR. MARK: Mr. Chairman, if I could
23 inquire about the matter of the Hydro evidence. There
24 was some request, as I understand it, that Ontario
25 Hydro would be providing some evidence on recent

1 circumstances, I am wondering if --

2 THE CHAIRMAN: Yes, I have great
3 difficulty, and I think I have expressed this, I don't
4 know how we can have the Panel 2 evidence of the
5 Intervenors without some evidence from Ontario Hydro as
6 to how the developments over the last few months fit
7 into the evidence of Panel 10 that they gave last
8 spring. I think that has to be done at some point, and
9 probably in advance of the intervenor evidence.

10 MS. SPOEL: Mr. Chairman, on a point with
11 respect to Panel 2. When the order of witnesses or
12 order of presentation of evidence was determined, it
13 was premised on the fact that it would start this week,
14 and based largely upon witness availability. Clearly
15 the same order may not be appropriate if it starts
16 November 30th. I assume that --

17 THE CHAIRMAN: I understand. We will
18 have to rearrange that. It's not your fault that has
19 happened and we will just have to rearrange it.

20 MR. HAMER: Might I suggest a meeting on
21 Monday after the question of the subpoena or the
22 Northwatch motion, that a meeting might be convened to
23 deal at least in a preliminary way with witness
24 scheduling since we are all going to be here?

25 THE CHAIRMAN: I think that would be a

1 good idea.

2 MS. KLEER: One further matter relating
3 deadlines for filing. Is the December 7th filing day
4 still in place? I'm not sure what the Board thinks
5 about this, but this week has meant a week of time out
6 for all of us with respect to filing. I don't know.
7 My personal opinion may be that we should keep the
8 December 7th date.

9 THE CHAIRMAN: We will extend the
10 December 7 to December 14th.

11 MR. HAMER: There is a deadline tomorrow,
12 if I recall.

13 MS. MORRISON: Panel 3A tomorrow.

14 THE CHAIRMAN: It can go ahead one week.
15 Anything unless before we are adjourned?

16 MR. B. CAMPBELL: Mr. Chairman, does the
17 Board have any opinion on this matter of Hydro
18 witnesses, which I must confess I see in my own mind
19 tied somewhat with the rationale behind the subpoena
20 request, does the Board have any sense that it could
21 share with us now of what procedure it sees for that?
22 Does it see any requirement for preparation of witness
23 statement, interrogatories? What process is
24 contemplated, because it will certainly affect our
25 planning immediately?

1 THE CHAIRMAN: Well, I had thought that
2 the simple way of doing it, and perhaps it was
3 over-simplification, would be that prior to the Panel 2
4 intervenor evidence there would be Hydro witnesses who
5 would come here, who would give evidence in chief as to
6 how the recent developments that have been in some of
7 the exhibits fit in with the Panel 10 evidence and that
8 then they would be subject to cross-examination in the
9 usual fashion by the parties, limited to just that
10 scope.

11 It seems to me that would help the
12 parties deal with their Panel 10 interventions.

13 MR. B. CAMPBELL: If that's the basis,
14 then thank you very much. That's what I needed to
15 know.

16 THE CHAIRMAN: This is all related to the
17 Northwatch motion as well and so we are going to have
18 to try and sort that out on Monday morning perhaps in a
19 procedural fashion, but it's all tied in with that.

20 It could be that -- well, I don't know.
21 I am not going to speculate at this hour of the night
22 what it could be.

23 We are adjourned until Monday morning at
24 ten o'clock.

25 MS. MORRISON: Ten?

1 THE CHAIRMAN: I am going to get at least
2 some of my ideas across. [Laughter]

3 ---Whereupon the hearing was adjourned at 5:10 p.m.,
4 to be resumed on Monday, November 23, 1992 at
5 10:00 a.m.

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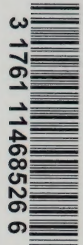
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